

2000 REPORT  
ON THE  
LOSS CONTROL CERTIFICATION PROGRAM,  
TARGETED ENFORCEMENT PROGRAM  
AND  
TARGETED CONSULTATION PROGRAM

MARCH 2000

DEPARTMENT OF INDUSTRIAL RELATIONS

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EXCERPTS FROM LETTERS BY EMPLOYERS  
IN Cal/OSHA's TARGETED ENFORCEMENT AND CONSULTATION PROGRAMS

"The [HHEP] consultative assistance by [the Cal/OSHA HHEP Safety Engineer] was informative and certainly worthwhile. The recommendations which he mentioned while walking the facility are in the process of being addressed. The program meeting was certainly more beneficial than was anticipated beforehand."

Excerpted from a 4 April 1996 letter from an employer who received targeted consultative assistance.

"... A year and a half has passed since this inspection and we are very pleased with the results of our efforts. Our workers' comp loss experience has dropped, some of our people are certified not only in respirator training but fork lift driving as well. [We] appreciated the way in which [Cal/OSHA] handled the audit and the obvious respect they have not only for their agency but the business community as well. We are a different company eighteen months later."

Excerpted from a 29 August 1996 letter from an employer who underwent a targeted enforcement inspection.

"Thank you for all your time and assistance. I assure you we are moving at great speed to remedy all of the discrepancies you noted on our past inspections. I have included a copy of our projected experience mod rate for the upcoming year. All the effort on your part and ours, is paying off. If you have any questions at all please give me a call. Also, if you are in the area stop by and we'll grab some lunch. Thanks again!!!!"

Excerpted from a 30 August 1996 letter from an employer who received targeted consultative assistance.

"Thank you for visiting our company to review our health and safety program. I really enjoyed our meeting and learned a great deal about ways to improve and maintain a safe and effective work environment. Especially helpful to me were your recommendations on accident investigation and reporting, OSHA Log 200 entries, and followup. In addition, I am eager to take advantage of the large selection of training videos available through Cal/OSHA."

Excerpted from a 12 November 1996 letter from an employer who received targeted consultative assistance.

"Although an OSHA review is not pleasant by nature, I would like to thank [Cal/OSHA staff] for being human and turning the inspection into more of a preventative maintenance session than a firing squad. The inspections definitely improve a business's ability to provide a safer environment for its employees and it is unfortunate (for those businesses who have demonstrated a commitment to safety) that fines have to be a part of this process as it tends to produce a negative experience when it really is a valuable process which should result in a positive experience. Thanks again, cautiously looking forward to your return."

Excerpted from a 7 February 1997 letter from an employer who underwent a targeted enforcement inspection.

"I wanted to take this opportunity to express our appreciation for the professional manner in which this inspection was completed. Our Cal/OSHA experience was very positive. We are committed to a safe work environment for our employees and the Cal/OSHA experience strengthened our program."

Excerpted from a 21 March 1997 letter from an employer who underwent a targeted enforcement inspection.

"Our broker was instrumental in helping us decrease our experience modification rate by providing classes to us and other [businesses] in their policy area on accident prevention and awareness. Our first contact with [our insurer] was in September of 1994. Since the October 1, 1994 policy renewal date, we have had no accidents greater than that which was handled with a band-aid or ice pack. This month I received notification that our modification rate has dropped to 83% for the 97-98 policy year and was informed that this lower rate takes us off the OSHA high hazard list."

Excerpted from a 22 September 1997 letter from an employer who received loss control consultation from its workers' compensation insurer.

"Our company requested consulting services from Cal/OSHA back in early 1996. We relied on the advice given to us by the Cal/OSHA consultants in implementing a thorough safety program and getting into Cal/OSHA compliance. The results have been fantastic. Our employees' morale is way up, our shops are cleaner and customers like that, our number of injuries are down 32% and our incurred claims are down from \$565,000 to \$342,000. Thanks for all your help!"

Excerpted from a 24 September 1997 letter from an employer who received targeted consultative assistance.

"Just a quick note to let you know that things are "looking up" for [the employer] since your inspection. Since implementing a new safety award incentive program and making requested improvements around the plant, we feel the employees are all more safety aware and are making every effort to work safely. We are optimistic and are looking forward to a bright injury free future."

Excerpted from a 28 September 1998 letter from an employer who received targeted consultative assistance.

"Thank you for following up. All compliance modifications were made subsequent to your visit, however, the biggest impact of your consultation was the change it produced in how [the employer] perceives the workplace and its workers. This new perception has absolutely had a positive effect in our workplace. Thank you again for your assistance. The consultation program is an absolute benefit to the commercial community."

Excerpted from a 29 September 1998 letter from an employer who received targeted consultative assistance.

"Since your visit, I went from 8 employees to 24 employees. The suggestions you made to me have made it easier to train my employees and have them understand the importance of safety. I have implemented my injury and illness prevention program and started my training of my employees. I also elected a safety committee to help me implement this program. We have implemented the suggestions that you made to me. I am confident that we are heading in the right direction. Thanks for your time."

Excerpted from a 30 September 1998 letter from an employer who received targeted consultative assistance.

"Thank you for setting us up with the High Hazard Consultant Team. That statement may seem odd since most employers cringe when Cal/OSHA is mentioned, however [the consultants] have taken the pain out of OSHA visits. We have established a goal of applying for VPP status in the year 2000. Due to the strong support of the High Hazard Employer Team we believe that we will achieve our goal. With their assistance we have already seen a 20% reduction in accidents, and have established an early return to work policy, which has significantly reduced the number of lost workdays. In addition our workers' comp costs have dropped, machinery maintenance and housekeeping have improved, and most importantly the employee morale is high."

Excerpted from a 29 January 1999 letter from an employer who received targeted consultative assistance.

"I would like to advise you of the excellent job that was done by Cal OSHA in communicating my position as a business owner in relationship to my workers' compensation....I would also like to compliment CAL OSHA on the literature and program materials that are available to small business owners."

Excerpted from a 10 November 1999 letter from an employer who received targeted consultative assistance.

"As a business owner, I expect my contacts with [Cal]OSHA to be quite unpleasant and hopefully something that I could avoid. However, I feel that I must commend one of your employees for the skillful way in which she has been able to work with me and my organization... The manner in which [Cal/OSHA] has presented suggestions and ideas has been easy to accept and put into practice. [Cal/OSHA] clearly wants to collaborate with owners, not just demand changes. [Cal/OSHA] treats us like a valued customer, for this I am grateful... I truly believe that the level of safety in our shops has increased due to [Cal/OSHA]."

Excerpted from a 15 November 1999 letter from an employer who received targeted consultative assistance.

"We really appreciate this consultation program which identifies potential problems and suggests solutions prior to being cited, or worse, by OSHA inspectors."

Excerpted from a 17 November 1999 letter from an employer who received targeted consultative assistance.

"The consultative visit was very helpful to the management and the union in identifying opportunities to improve safety in the workplace. Thank you for allowing both union and management personnel to participate during your visit. This was the first time both entities were directly involved with this type of Cal/OSHA process and it was a positive experience for both."

Excerpted from a 21 December 1999 letter from an employer who received targeted consultative assistance.

"Despite the potential for an adversarial climate due to the nature of the inspection process, [Cal/OSHA inspectors] conducted with complete professionalism... and did everything in their power not to disrupt our employees who provide the resident care and other services."

Excerpted from a 28 January 2000 letter from an employer who received a targeted enforcement inspection.

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2000 REPORT ON THE  
LOSS CONTROL CERTIFICATION PROGRAM,  
TARGETED ENFORCEMENT PROGRAM AND  
TARGETED CONSULTATION PROGRAM

March 2000

Division of Occupational Safety and Health  
Department of Industrial Relations

EXECUTIVE SUMMARY

Former Labor Code Section 62.9(i)(1) and (2) required that the Department of Industrial Relations submit to the Joint Legislative Budget Committee Interim (1997) and Final (1998) Reports on the Targeted Enforcement (Inspection) and Consultation Programs. An Interim Report had to be submitted no later than January 1997 and a Final Report no later than January 1998. The Department submitted the legislatively-required reports in a timely manner.

Labor Code Section 62.9 specified that the Interim and Final Reports must contain the following information: (1) number and type of targeted employers inspected; (2) number and type of follow-up inspections conducted; (3) the number and type of violations observed and corrected; (4) the number and type of enforcement actions taken; (5) the total number of program staff hours expended in enforcement, administration, and support for the program; and (6) an overall assessment of the efficacy of the programs, supported by workplace injury and illness data.

Labor Code Section 62.9 was amended in 1998 by Assembly Bill 1957 and no longer requires reports on the Targeted Enforcement and Consultation Programs. Even though no statutory mandate exists, the Division of Occupational Safety and Health believes that it is important to report yearly on the status of the Loss Control Consultation, Targeted Enforcement and Targeted Consultation Programs.

The 2000 Report summarizes the status of the programs established by the Department of Industrial Relations as a result of the 1993 reforms to the workers' compensation insurance system--the Loss Control Consultation Certification Program and the Targeted Enforcement Program and the Targeted Consultation Program.

Loss Control Certification Program

As of December of 1999, a total of 120 insurer group plans have been recertified, representing a total of 281 individual insurers, by the Loss Control Certification Unit (LCCU). To date, 94 evaluations of insurers' Annual Loss Control Plans have been performed (represents a 78% sample of certified insurer Annual Plans). The audits continue to show that California workers' compensation insurers are making good faith efforts to understand and comply with the statutes and regulations governing the provision of loss control consultation services to their insureds. Evaluations from the 1997-1999 plan years indicate that most carriers have provided loss control consultation services to nearly all the insureds they selected for their Annual Plan. Only on rare occasions has the Loss Control Consultation Certification Program discovered that an insurer failed to provide loss control services to a targeted insured. Usually such an outcome was a result of an insurer's failure to understand the regulatory requirements fully.

In order to provide a quantitative profile of the effectiveness of the Loss Control Certification Program, the LCCU examined in 1999 a sample of insured employers' experience with the Loss Control Certification Program, as reported by their workers' compensation insurers. The Sample Summary of Insured Employers' Experience with the Loss Control Certification Program, as Reported by Their Insurers was released in January 2000.

The major findings of *Sample Summary* are as follows: (1) loss control services delivered to targeted employers under the Loss Control Certification Program have had a significant positive impact in reducing the frequency of workplace injuries to California workers; (2) the costs to insurers for the Loss Control Certification Program do not present an undue burden on insurers; (3) the costs to insurers for the Loss Control Certification Program have declined, both as a percentage of insurers' direct written premium and as a percentage of insurers' total loss control costs; (4) competition under open rating has caused significant turnover in the coverage of targeted employers, which has led to the exclusion of a number of targeted employers identified as eligible for loss control services; (5) adoption of a uniform selection methodology will assure a more consistent population of employers across insurer groups who would most benefit from loss control services under the Loss Control Program; and (6) the Loss Control Certification Unit is meeting its mandate contained in Labor Code Section 6354.5.

Lastly, programmatic needs include additional plan evaluator positions to increase the number and scope of insurer audits and an additional analyst position to allow the program to conduct a more comprehensive study to assess the effectiveness of insurer's provision of loss control services to their selected insureds.

#### Targeted Inspection and Consultation Fund

The 2000 Report describes the status of the Targeted Inspection and Consultation Fund (TICF) (Labor Code Sections 62.7 and 62.9) for insured and self-insured employers. In 1995, 1996, 1997, 1998 and 1999, 11,650, 11,387, 11,378, 11,812 and 13,019 employers, respectively, were reported by the Workers' Compensation Insurance Rating Bureau (WCIRB) to have had an ExMOD of 1.25 or more and were subject to the TICF assessment under Labor Code Section 62.7 (in 1995) and Section 62.9 (in 1996, 1997, 1998 and 1999). A total of 59,246 TICF invoices were sent to insured employers for the years 1995 through 1999. The total amount invoiced for 1995, 1996, 1997, 1998 and 1999 was \$33,860,082. As of 1 February 2000, the net

amount collected from insured employers for 1995 through 1999 is \$32,767,710, or 96.8% of the total assessment.

As provided by Labor Code Section 62.9(c)(5) and (6), employers who have been sent TICF invoices, but who have failed to pay the amount assessed in thirty (30) days, receive a "Notice of Delinquency" from the Department of Industrial Relations. Delinquent TICF invoices (plus a 25% penalty) are then referred to the Franchise Tax Board, Non-Tax Debt Collection Unit, for collection after 15 days of non-payment. As of 1 February 2000, a total of 4,576 unpaid TICF accounts have been referred to the Franchise Tax Board, representing \$2,376,514 in uncollected monies (with imposition of the 25% penalty, the total is \$2,974,762). As of 1 February 2000, \$804,898 (27%) has been collected by the Franchise Tax Board.

The TICF Assessment for self-insured employers indicates that 584 self-insured employers were sent invoices for a total assessment figure of \$1,652,473. As of 1 February 2000, a total of \$1,647,473 (99.7%) has been collected from self-insured employers.

#### Targeted Consultation Program

The 2000 Report describes the status of the Targeted Consultation Program (see Labor Code Sections 62.9, 6354 and 6355). Data for various "activity and efficacy measures" for the Targeted Consultation Program for the years 1994 through 1999 are presented.

Activity Measures indicate that the targeted consultation program is concentrating its efforts on the subset of TICF-assessed employers with the most significantly elevated ExMOD, i.e., those assessed employers with an ExMOD of 200% or greater. In 1999, 329 of these employers were provided and completed targeted consultation. In 1999, a total of 1,330 serious and 2,969 other-than-serious violations of Title 8 regulations were observed and corrected. In addition, a number of other loss-related deficiencies were observed which are not necessarily violations of Title 8.

These included: Injury and Illness Prevention Program deficiencies; slips, trips and falls; the absence of safe work practices; ergonomics and musculoskeletal injuries from materials handling problems; poor work-related injury and illness recordkeeping and loss trend analysis; deficiencies in chemical hazard communication programs; absence of machine and tool guarding and electrical hazards.

Employers who received targeted consultation assistance saw their establishments' workplace injury and illness incidence rates, and their workers' compensation loss indicators, improve more than other California employers as a result of the consultation. For example, targeted consultation employers saw their lost workday case incidence rate (LWDI) decrease by 56%. During the same period of time, the average percentage decrease in the LWDI for California employers in general was only 7%. In addition, targeted consultation employers saw reductions in various other workplace injury and illness rates and workers' compensation loss indicators of from 1% to 45%.

#### Targeted Enforcement Program

The 2000 Report describes the status of the Targeted Enforcement Program (see Labor Code Section 6314.1). From 1994- 1999, targeted enforcement inspections have been conducted on a total of 2,335 employers in high hazard industries. During these targeted enforcement inspections, 11,747 violations of Title 8 were observed and corrected. These included 4,741 serious, willful or repeat violations and 7,006 other-than-serious violations. The violation per inspection ratio arising from targeted enforcement inspections (i.e., 5.21) continues to be more than twice the violation per inspection ratio arising from non-targeted (complaint and accident) enforcement inspections (i.e., 2.09).

### Summary

In sum, the 2000 Report continues to indicate that the targeting of establishments with elevated rates of workplace injuries and illnesses, and the application of consultation and enforcement resources to those establishments, is an effective way to identify hazards and violative conditions and to reduce injury and illness incidence rates and workers' compensation loss indicators.

Please direct any questions about the 2000 report, or suggestions for the 2001 Report, to John Howard, Chief, Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142.

## I. 1993 WORKERS' COMPENSATION INSURANCE REFORM LEGISLATION

On 16 July 1993, Governor Wilson signed into law six bills passed earlier that same day by the Legislature (AB 110, AB 119, AB 1300, SB 484, SB 983, and SB 1005).

These six bills, together with another bill, SB 30, which the Governor signed on 28 July 1993, represented, according to most observers at the time, significant reform of the California workers' compensation insurance system.

Some of the highlights of the new 1993 injury and illness compensation laws included:

- A seven percent rollback in employers' workers' compensation insurance premiums;
- Abolishment of the "minimum rate" law;
- A cap on vocational rehabilitation expenditures;
- Medical cost containment;
- Restrictions on mental stress claims;
- Provision for managed care options;
- Anti-fraud protections; and
- Opportunities for labor and management in the construction industry to create alternatives to the current injury compensation system in a collective bargaining agreement.

Even though the new workers' compensation reform laws related primarily to injury compensation, there were five important provisions in AB 110 pertaining to injury prevention, i.e., Insurance Code Section 11721 and Labor Code Sections 62.7, 6314.1, 6354, 6355, and 6357.

These five provisions provided the statutory basis for the Loss Control Certification Program, the Targeted Enforcement Program and the Targeted Consultation Program.

### A. Insurance Code Section 11721

Section 11721 imposed two major obligations on workers' compensation insurers.<sup>1</sup> Insurers were required to:

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<sup>1</sup> See Attachment A for the text of Insurance Code §11721. In 1995, Insurance Code §11721 was amended and its provisions, together with some amendments, were adopted as Labor Code in §6354.5. See Attachment H for the text of Labor Code §6354.5.

- "Maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations;" and
- Submit to the Director an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards on a form prescribed by the Director and meeting specific statutory requirements."

Section 11721 was implemented by the Department of Industrial Relations by establishing a Loss Control Certification Unit within the Division of Occupational Safety and Health.<sup>2</sup> See Section III of this Report.

#### B. Labor Code Section 62.7

AB 110 added Section 62.7 to the Labor Code and established the Cal/OSHA Targeted Inspection and Consultation Fund (TICF) as a Special Fund in the State Treasury.<sup>3</sup>

According to Section 62.7, monies from the TICF could be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the Cal/OSHA Enforcement Inspection and Consultation Programs and for certifying the loss control services of workers' compensation insurers.

In order to fund the administrative costs of implementing and maintaining the various programs mandated by AB 110, Labor Code Section 62.7 permitted the Director of the Department of Industrial Relations to levy an assessment, expressed as a percentage of premium, on all insured employers with a workers' compensation insurance experience modification rating (ExMOD) of 1.25 or greater, and on private self-insured employers with an equivalent experience rating of 1.25 or greater and to direct the assessments to the Targeted Inspection and Consultation Fund.

In doing so, Labor Code Section 62.7 provided a mechanism for augmenting the funding currently available to the Division of Occupational Safety and Health from the State General Fund and from the U.S. Department of Labor, Occupational Safety and Health Administration, to conduct programmed enforcement inspections of California employers with the highest injury, illness and workers' compensation loss rates.

The monetary assessment of the type found in Labor Code Section 62.7 was described as a type of "user" funding, since the assessed employers make "use" of

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<sup>2</sup> The Loss Control Certification Unit (LCCU) is a component unit of the Division of Occupational Safety and Health, but not a component of the Cal/OSHA Program. See Section III of this Report for an update on administrative implementation of Insurance Code §11721 (later transferred to Labor Code §6354.5).

<sup>3</sup> See Attachment B for text of Labor Code §62.7.

consultation assistance resources which are made possible by the TICF to eliminate their work-related injuries, illnesses and workers' compensation losses.

Prior to 1993, several other states had implemented various types of occupational safety and health consultation and educational assistance programs funded primarily by state, as opposed to federal, monies. However, California was the first state to utilize funds raised from individual employers to provide support for compliance or enforcement inspection activities (See Section 6414.1).

See Section II.B. and C. for an update on the 1995 and 1998 Legislative reform of the TICF Assessment Fund Program through a new Labor Code Section--Section 62.9, passed during the 1994-1995 Legislative Session (Senate Bill 996), and amendments to that Labor Code Section, passed during the 1997-98 Legislative Session.

#### C. Labor Code Section 6314.1

AB 110 repealed the existing Labor Code Section 6314.1<sup>4</sup> and added new language Section 6314.1<sup>5</sup> which required the Division to

- "Identify employers in high hazardous industries with the highest incidence of preventable<sup>6</sup> occupational injuries and illnesses and workers' compensation losses;"
- "Establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis;" and
- "Coordinate the inspections conducted in accordance with Section 6314.1 with the Division's consultation services."

Section 6314.1 required that the Division establish a new compliance program for

"targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

Section 6314.1 sets forth a programmatic formula which requires a two-tiered selection or targeting methodology. First, "high hazardous industries" must be selected, and then specific employer-members of those hazardous industries must be selected on an establishment level basis. Section 6314.1 provides, then, a combination "industry" and "establishment" selection process. Identifying

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<sup>4</sup> The pre-1993 Labor Code §6314.1 had established the "100 High Hazard Industry List" as a tool for the selection of employers for programmed inspections by the Division. One of the limitations of the 100 High Hazard Industry List was that the sheer number of its entries tended to undermine the concept of "highest hazard." In addition, since the List was composed only of industry classifications, it could not serve as a means to identify specific establishments for inspection.

<sup>5</sup> See Attachment C for the text of Labor Code §6314.1.

<sup>6</sup> Although no definition of the term "preventable" was provided in §6314.1, the Division understands the term "preventable" to mean that there exists a feasible and effective means of reducing or eliminating the risk of occupational injuries, illnesses or workers' compensation losses.



employers according to establishment level "hazard" criteria is much easier said (or legislated) than done. In California, workplace injury and illnesses data, by employer, cannot be accessed from one source.<sup>7</sup>

For instance, Section 6314.1(a) provides that employers can

"be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations; histories of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates."

Some of these employer data sets were defunct even at the time that AB 110 was enacted, e.g., Federal Hazardous Employers' List. Other data sets provide employer data for only a small subset of California employers, e.g., the experience modification rating.

Finally, when data compiled by "rating organizations," e.g., the California Workers' Compensation Insurance Rating Bureau (WCIRB), is accessed, such data is arrayed differently in terms of categorizing employers as "high hazard." The WCIRB database categorizes employers by "Governing Classification Codes" and OSHA injury incidence database categorizes employers by Standard Industrial Classification (SIC) Codes.

The Division has studied ways to overcome the obstacles to creating a single list of employers

"in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses"

which would be suitable as a targeting tool for performing programmed enforcement inspections and for offering consultation services.

See Sections V. and VI.B for a discussion of various employer selection methods.

#### D. Labor Code Sections 6354 and 6355

AB 110 amended Sections 6354<sup>8</sup> and 6355<sup>9</sup> of the Labor Code to require that the Division:

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<sup>7</sup> In States with only one provider of workers' compensation insurance, all workplace injury and illness claims -made and claims -paid data is aggregated in a centralized database. California has multiple providers of workers' compensation insurance and has not had a centralized database for all workers' compensation claims. In 1993, the Legislature mandated a Workers' Compensation Information System (WCIS) to be administered by the Division of Workers' Compensation (DWC). The section was amended in 1997. See Labor Code Section 138.6. The California WCIS is currently under development by DWC and is expected to be operational in 2000. The Division of Occupational Safety and Health hopes to utilize the WCIS database as a part of its "targeting" methodology. See Section V. of this Report.

<sup>8</sup> See Attachment D for full text of Labor Code §6354.

- "Establish a program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses, and places of employment where they are occurring, by utilizing the data system from which the list of high hazard employers is developed. The program must also include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries;"
- "Develop procedures for offering consultation services to high hazard employers which may include development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records; and"
- "Develop model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualification of instructors."

In adding the concept of "offering" consultative assistance, AB 110 provided a more proactive focus for Cal/OSHA Consultation Service. Amended Section 6354 requires that

"the Division develop procedures for offering consultation services to high hazard employers ... " (underlining added)

identified from the data used to identify high hazard employers for the targeted enforcement program.<sup>10</sup>

Careful comparison of Section 6314.1 with Section 6354 reveals that the latter provides a programmatic formula a little different than that which Section 6314.1 provides. Section 6354 requires that the Division establish a program

"...for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring."

However, absent from the Section 6354 programmatic formula is the "high hazardous industries" modifier. Rather, it is the "categories" of hazards "causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses" and "the places of employment where they are occurring" which must be identified.

See Sections V. and VI.B. for a discussion of the various employer selection methods found in the 1993 workers' compensation insurance reform legislation.

In requiring the Division to "establish" a targeted consultation program, Section 6354 also mentions that

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<sup>9</sup> See Attachment E for full text of Labor Code §6355.

<sup>10</sup> Traditionally, consultative assistance is provided to employers upon "request." The concept of "offering" consultative assistance to which §6354 refers is new. However, to be of any value in reducing employee injuries and illnesses and workers' compensation losses, an "offer" of consultative assistance has to be accepted. See Section VI.

"The program must also include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries."

and that the Division

"shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualification of instructors."

In conjunction with the efforts of the Occupational Safety and Health Standards Board to adopt a repetitive motion injury standard, the Division has ensured that the targeted consultation program contain a programmatic emphasis on reducing the number of repetitive motion injuries, including back injuries, during the performance of on-site consultative assistance visits. In addition, the targeted consultation program has developed several model injury and illness prevention training programs to prevent repetitive motion injuries. See Section VI.B.

E. Labor Code Section 6357

AB 110 also added a new Section 6357 to the Labor Code<sup>11</sup> which requires the California Occupational Safety and Health Standards Board--an agency separate and independent from the Division of Occupational Safety and Health Standards Board--to adopt

"[O]n or before January 1, 1995... standards for ergonomics in the workplace designed to minimize instances of injury from repetitive motion."

At the time the legislation passed in mid-1993, the California Occupational Safety and Health Standards Board ("Standards Board") was relying on the Division of Occupational Safety and Health and its public Ergonomics Advisory Committee to develop an ergonomics standard for the Standards Board's consideration and adoption. In November of 1993, a Notice of Public Hearing was published in the California Notice Registry which contained the ergonomics standard (8 CCR Section 5110) proposed by the Division based on the public advisory committee process. In November of 1994, after two large public hearings, and the submission of over 6,500 written comments, the Standards Board voted down the proposed Section 5110 standard.

On 19 January 1995, the Standards Board was sued by the California Labor Federation, and three named injured workers, in Superior Court in Sacramento, California for its failure to "adopt" a standard "to minimize instances of injury from repetitive motion" by 1 January 1995. The Superior Court ordered the Standards Board to develop and adopt a standard which complied with Section 6357 by 1 December 1996.

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<sup>11</sup> See Attachment F for full text of Labor Code Section 6357.

In December of 1995, the Standards Board published a Notice of Public Hearing which contained a proposed repetitive motion standard. Hearings on the proposed standard were held on 18 (Los Angeles) and 23 (Sacramento) January 1996.

On 14 November 1996, the Standards Board adopted a new 8 CCR Section 5110 entitled "Repetitive Motion Injuries."

The Standards Board's adoption met the 1 December 1996 deadline established by the Sacramento County Superior Court. However, on 3 January 1997, the Office of Administrative Law disapproved Section 5110 and returned it to the Standards Board "because Section 5110 fails to satisfy the clarity standard of Government Code Section 11349.1." Within 120 days (as permitted by the California Government Code), the Standards Board resubmitted Section 5110 to the Office of Administrative Law for its approval.

The Office of Administrative Law approved 8 CCR Section 5110 on 3 June 1997, and the new repetitive motion injury standard became legally enforceable in California on 3 July 1997.<sup>12</sup>

In mid-1997, Section 5110 was challenged by both organized labor and employer representatives in the Sacramento Superior Court. On 15 October 1997, Superior Court Judge James T. Ford issued a Minute Order and made the following changes to Section 5110 and declared the remainder to be valid:

- (1) Judge Ford modified subsection (a)(1) to strike the words "predominant" and "(i.e., 50% or more)";
- (2) Judge Ford modified subsection (a)(3) to strike the word "objectively;"
- (3) Judge Ford modified subsection (a) by striking the words "Exemption: Employers with 9 or fewer employees," following subdivision (a)(4); and
- (4) Judge Ford modified subsection (c) by striking the entire subsection (c).

On 12 December 1997, the Occupational Safety and Health Standards Board, as well as the American and California Trucking Associations, filed an appeal of the Superior Court Order with the Third Appellate District of the California Court of Appeals in Sacramento.

On 13 March 1998, the Third Appellate District stayed Judge Ford's Order of 6 February 1998 (issued at a special hearing on that date), thus reinstating the wording of the standard as adopted by the Standards Board on 14 November 1996.

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<sup>12</sup> See Attachment G for the text of §5110 as adopted by the Standards Board on 14 November 1996, amended by the Third Appellate District of the California Court of Appeal on 29 October 1999, and as currently enforced by the Division of Occupational Safety and Health.

On 29 October 1999, the Third Appellate District of the Court of Appeal reversed in major part the judgment of the Superior Court.

The Court of Appeal concluded on the appeal by the Standards Board and the Associations

"that, except for one conspicuous exemption, the regulation [8 CCR Section 5110] is valid, that the trial court improperly invaded the rulemaking authority of the [Standards] Board by striking the remaining provisions and that the APA-based challenges to the regulation are meritless."

The "one conspicuous exemption" that the Court of Appeal found defective in the Standards Board's regulation was the small employer exemption, found in 5110, subsection (a).

The trial court had ruled this provision was inconsistent with the Standards Board's statutory authority to "minimize RMIs in the workplace." On this issue, the Court of Appeals agreed with the trial court, stating that a standard which excludes four out of five workplaces is inherently inconsistent with [the Board's statutory] responsibility to promulgate standards for minimizing RMIs in all places of employment in California.

In addition, the Court of Appeal specifically found that there was no reason to return the entire regulation to the Standards Board for more rulemaking just to sever the invalid small employer exemption. As a result, the small employer exemption in Section 5110 ceased to have any legal effect.

Neither the Standards Board nor the employer trucking associations filed a petition for hearing in front of the California Supreme Court. Thus, litigation over California's ergonomics standard concluded approximately three years after the standard was adopted by the Standards Board.

Despite the end of litigation, the Legislature in 1999 reaffirmed its continuing concern over the prevalence of repetitive motion injuries in California workplaces and reminded the Occupational Safety and Health Standards Board of its continuing duty to carry out Labor Code Section 6357.<sup>13</sup>

## II. LEGISLATIVE MODIFICATIONS IN 1995, 1998 and 1999

### A. Senate Bill (SB) 1051 -- Labor Code Section 6354.5

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<sup>13</sup> See Attachment F for the full text of Labor Code Section 6719.

During their 1994-1995 session, the Legislature amended Labor Code Section 62.7 by means of Senate Bill 1051. SB 1051 created a Special Fund separate from the Cal/OSHA Targeted Inspection and Consultation Fund (TICF) for the deposit of certification fees from the Loss Control Certification Unit (LCCU).

New Labor Code Section 62.7<sup>14</sup> repealed the previous provision which had insurer certification fees being deposited into the Targeted Inspection and Consultation Fund within the State Treasury. The reason for this change was that insurers were concerned that their certification fees could be expended by the Department of Industrial Relations to support compliance activities as set forth in Section 6314.1.

In addition, SB 1051 amended Insurance Code Section 11721 to read as follows:

"An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code."

SB 1051 then added a new Section 6354.5 to the Labor Code<sup>15</sup> which essentially duplicated the previous Insurance Code Section 11721, as set forth in AB 110, but added the following new provisions:

- SB 1051 provided that the insurers do not have "to identify any employer by name" in their annual health and safety loss control plan;
- SB 1051 provided for the confidentiality of information provided to the Division's LCCU during the certification process;
- SB 1051 required the DIR to develop "guidelines to assist insurers in identifying the employers with the highest preventable health and safety hazards;" and
- SB 1051 provided that an exemption, extension or exception to the annual filing requirements can be granted by the LCCU with a showing by the insurer that one of the following applies:

"That no new filing is required because there are no material changes to the plan currently on file with the director;

That the filing is limited to material changes to the plan on file with the director;

That the information necessary for the filing is not yet in the possession of the insurer and that an extension of time for the filing is necessary to enable the insurer to make a full and complete filing; or

That the insurer has no policy holders in California who meet the appropriate criteria for identification pursuant to the plan currently on file with the director."

## B. Senate Bill (SB) 996 -- Labor Code Section 62.9

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<sup>14</sup> See Attachment B for full text of amended Labor Code §62.7.

<sup>15</sup> See Attachment H for text of Labor Code §6354.5.

## 1. TICF Assessment Formula for Insured Employers

During their 1994-95 session, the Legislature also took a second look at the way Section 62.7 assessed employers with ExMODs of 1.25 or more for the Targeted Inspection and Consultation Fund (TICF).

As a result, SB 996 was passed and went into effect 30 June 1995 on an urgency basis. It added a new section to the Labor Code--Section 62.9, which is more extensive than Section 62.7.<sup>16</sup>

SB 996 changed the way which insured employers are assessed for the TICF. Instead of the TICF assessment being based on a percentage of the premium dollar paid by the employer to the insurer (as the former Section 62.7 mandates), assessments under Section 62.9 are fixed by a statutory "schedule," based on an employer's yearly workers' compensation payroll.

Section 62.9(a) set forth a schedule of the amount an employer owes in TICF assessment as follows:

Payroll Range	Assessment Amount
Less than \$250,000	\$ 100
\$250,000 to \$500,000	\$ 200
\$500,001 to \$750,000	\$ 400
\$750,001 to \$1,000,000	\$ 600
\$1,000,001 to \$1,500,000	\$ 800
\$1,500,001 to \$2,000,000	\$1,000
\$2,000,001 to \$2,500,000	\$1,500
\$2,500,001 to \$3,500,000	\$2,000
\$3,500,001 and above	\$2,500

## 2. TICF Assessment Formula Self-Insured Employers

In addition to modifying the manner in which insured employers are to be assessed for the TICF, SB 996, in Section 62.9(f)(1), also required the Director of the Department of Industrial Relations to adopt revised regulations to determine experience modification ratings for private self-insured employers

"that is generally equivalent to the modification ratings that apply to insured employers and is weighed by both severity and frequency."

After passage of AB 110 in 1993, the Self Insurance Plans (SIP) Program of the Department of Industrial Relations, and the California Self Insurance Association, developed a set of regulations to determine an

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<sup>16</sup> See Attachment I for the text of §62.9.

"equivalent" experience modification rating for self insured employers. The methodology in these regulations was weighted toward the severity of a workers' compensation claim and was viewed by self-insured employers as not truly "equivalent" to the ExMOD.<sup>17</sup> Revised regulations containing a new self-insured employer assessment methodology (as required by Labor Code Section 62.9(f)(1)) were prepared by the Department of Industrial Relations and went into effect on 10 November 1997.<sup>18</sup>

### 3. TICF Collection Procedures

Labor Code Section 62.9(c)(1) through (6) set forth procedures for the Department of Industrial Relations (DIR) to follow in collecting TICF assessments from insured employers. These procedures are as follows:

#### a. DIR Request for List of 1.25 Insured Employers.

"Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected." Section 62.9(c)(1)

#### b. DIR Request for Annual Payroll

"The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers." Section 62.9(c)(2)

#### c. Indirect Invoicing by DIR to Insured Employers Through Insurers

"On or before July 16, 1995, for the purposes of the July 1995 assessment, and thereafter not later than March 1 of each year, the director shall provide each insurer with a statement identifying each of its current insured employers subject to assessment, and the amount of the total assessment, and the amount of the total assessment for which each insured employer is liable. The insurer immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision. Each insurer shall report to the director the date on which the notice required by this paragraph was mailed." Section 62.9(c)(3)

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<sup>17</sup> See Attachment J for text of 8 CCR §15600 et seq.

<sup>18</sup> See Attachment K for the text of 8 CCR §15601.7.



d. Referral of Disputes to DIR

"In the event an insured employer notifies the insurer that there is a disagreement as to the payment obligation described in paragraph (3), the insurer shall refer the employer to the department and notify the director that the employer has made an objection." Section 62.9(c)(4)

e. DIR Identification of Unpaid Assessments, Insurer Notification and Insurer-Initiated Notice of Delinquency

"The director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail. Each insurer shall report to the director the date on which the notices required by this paragraph were mailed." Section 62.9(c)(5)

f. DIR Referral of Unpaid Assessments

"If an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code." Section 62.9(c)(6)

4. Reports to the Legislature

Labor Code Section 62.9(i) also set forth requirements for the Department of Industrial Relations to submit reports to the Joint Legislative Budget Committee in January of 1997 and 1998 on the targeted enforcement and consultation programs. Reports were submitted in January 1997 and 1998.<sup>19</sup>

a. Programmatic Activity and Efficacy Measures

Section 62.9(i) specifies that the Reports shall contain the following information:

- The number and type of targeted employers inspected.

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<sup>19</sup> The 1999 and 2000 Reports are not legislatively-required reports.

- The number and type of follow-up enforcement inspections conducted.
- The number and type of violations observed and corrected.
- The number and type of enforcement actions taken.
- The total number of program staff hours expended in enforcement, administration, and support for the programs.
- A preliminary (1997) and an overall (1998) assessment of the efficacy of the programs, supported by workplace injury and illness data.

b. Alternative Funding Methodologies

Section 62.9(k)(1) specifies that the Department:

"... shall submit to the Legislature a report addressing one or more alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7. The report also shall propose and evaluate one or more alternatives to the use of workers' compensation insurance experience modification ratings for the identification of employers subject to assessment, and alternative methods for determining assessment amounts and collecting the assessments."

Section 62.9(k)(2) also specifies that the Department in its 1997 Interim Report:

"... shall submit to the Legislature an interim report concerning its progress with regard to the report described in paragraph (1), including any tentative findings made by the department concerning alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7."

5. Sunset Clause for Targeted Inspection and Consultation Fund

Lastly, SB 996 provided for a "sunset" of the Targeted Inspection and Consultation Fund by stating in subsection (? ) that

"This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date."

C. Assembly Bill (AB) 1957 -- Labor Code Section 62.9

SB 996 in 1995 provided for a "sunset" of the Targeted Inspection and Consultation Fund authority by stating in subsection (? ) that

"This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date."

During their 1997-1998 session, the Legislature amended Labor Code Section 62.9 by means of Assembly Bill 1957.

In addition to other minor changes, AB 1957 extended the authority for the Department to levy and collect assessments from employers to fund the Cal/OSHA Targeted Inspection and Consultation Programs from 1 January 1999 to 1 January 2000.<sup>20</sup>

D. Assembly Bill (AB) 1655 -- Labor Code Section 62.9

In 1999, AB 1655 was enacted which removed the "sunset" provision--subsection (g)--from Labor Code Section 62.9. Effective 1 January 2000, the Department has the statutory authority to levy and collect assessments from employers to support the Targeted Inspection and Consultation Programs on an annual basis without "sunset."

### III. LOSS CONTROL CERTIFICATION PROGRAM

A. Initial Organizational Activities

1. Establishment of Loss Control Certification Unit (LCCU)

In 1993, the Director of the Department of Industrial Relations (DIR) assigned the programmatic responsibility for implementing the provisions of Insurance Code Section 11721 (and later Labor Code Section 6354.5) to the Division of Occupational Safety and Health (DOSH) within the Department. In 1994, the DOSH established a Loss Control Certification Unit (LCCU) within the Division.

2. Establishment of an Advisory Committee ("Working Group")

In addition to establishing a Loss Control Certification Unit, the Division also established an ongoing advisory committee (called the "Working Group"), composed of labor, employer and insurer representatives, to provide assistance to the LCCU in determining the best methods for certifying and evaluating the insurer's plans under 8 CCR Section 339.1 et seq.

B. Regulatory Development -- 1993-1999

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<sup>20</sup> AB 1957 also deleted obsolete provisions from Section 62.9, giving the Department explicit authority to collect the assessments from employer-insureds, as opposed to the previous language in Section 62.9 which provided for "indirect" billing of employer-insureds through their workers' compensation insurers.

1. Initial

The first task of the LCCU was to adopt implementing regulations which set forth the insurers' duties under Insurance Code Section 11721. Regulations were developed through an advisory committee composed of representatives from labor, management and the insurance industry. 8 CCR Section 339.1 through 339.11 went into effect on an emergency basis on 10 January 1994.<sup>21</sup>

2. Revision

In October of 1998, the Division of Occupational Safety and Health convened a second advisory committee to review 8 CCR Sections 339.1 through 339.11 to clarify the insurer's duties and the Division's responsibilities under the statute. The Loss Control Regulatory Revision Advisory Committee is composed of representatives from the labor, employer and insurer communities. The Advisory Committee met for the second time in November of 1999, and revisions to the loss control regulations are being prepared for a public hearing expected to be held in early 2000.

- C. Programmatic Activities -- 1994-1999

1. Initial Certifications -- 1994-1995

By early 1995, all workers' compensation insurers writing workers' compensation insurance in California--a total of 110 insurer groups, which represent 302 individual insurers--had been certified by the LCCU.

2. Recertifications -- 1999

As of December 1999, a total of 120 insurer group plans have been recertified. This represents a total of 281 individual insurers. Six (6) individual insurers have been given provisional certifications because they are new to the loss control certification program. Ten (10) insurer groups became uncertified in 1999 and this information was reported to the Department of Insurance. These insurers either had failed to achieve recertification prior to the expiration of a current annual plan, their annual application for recertification was denied or they had their certification rescinded for failure to perform according to their Annual Plan on file with the Loss Control Unit.

3. Plan Evaluations -- 1997-1999

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<sup>21</sup> See Attachment L for text of 8 CCR Sections 339.1 through 339.11.

a. Performance of Plan Evaluations

Through 1999, the LCCU has conducted a total of ninety-four (94) evaluations of insurers' Annual Loss Control Plans. This represents 78% of certified insurer groups. The evaluations covered insurers with over 90% of the workers' compensation market in California.

b. Findings from Plan Evaluations

(1) Most California workers' compensation insurers are making good faith efforts to understand and comply with the statutes and regulations governing the provision of loss control services to their insureds.

(2) Evaluations of the certified Annual Plans from the 1994 to 1997 plan years indicate that most carriers have provided loss control services to a majority of the insureds they selected for their Annual Plan. Only on rare occasions has the LCCU discovered that an insurer failed to provide any loss control services to a targeted insured and usually such an outcome was a result of an insurer's failure to understand the regulatory requirements fully.

(3) The LCCU believes that the competitive effect of open rating has resulted in disruptions in the senior management of loss control services within many workers' compensation insurance companies; and that many insurers' loss control staffing is still in flux due to the competitive pressures of open rating.

Turnovers in loss control management within an insurer's organizational structure has created repeated deficiencies in Annual Plan applications and plan implementation. Starting over with new managers is very time consuming for the LCCU since the Unit has to educate the insurer's personnel during the application process. Wide variances in Annual Plan performance have been seen by Plan Evaluators when loss control management continuity has been disrupted.

(4) Some specific observations from the insurer plan evaluations which the LCCU conducted from 1994 through 1998 indicate the following:

(a) Performance Improvement 1994 -- 1999

When comparing insurers' performance on their 1994 and 1995 Plans with their 1996 through 1999 Plans, the LCCU has noted general improvement in insurers' understanding of their regulatory responsibilities and in their delivery of consultative services to their targeted insureds.

(b) Cooperation

With very few exceptions, insurers have been very cooperative with the LCCU during the Plan evaluation process. Several insurers have expressed to the LCCU that the process of certification and evaluation has assisted them in focusing on their entire "book of business" and in identifying those insureds who need loss control consultative services, but who otherwise may have been overlooked.

(c) Consultant Training and Management Intervention

The LCCU continues to note that loss control consultants, both those working directly for the insurer and those under contract from outside sources, are in need of more training on specific provisions of the insurers' certified plans and the purpose of the loss control regulations. Often insurer loss control management has not intervened in a timely manner to see that the planned consultation services were actually provided.

(d) Documentation

In numerous cases, the LCCU has noted that insurer and/or consultant file documentation has failed to substantiate full compliance with the insurer's certified Annual Plan or with the regulations. Many files have lacked the data which is necessary for the LCCU to verify the effectiveness of an insurer's provision of loss control services to their targeted insureds.

(e) Selection Methodologies

Insurer selection methodologies for targeting their insureds often fail to identify those who have the greatest workers' compensation losses or the most significant preventable safety and health problems.

Numerous insurers have often used a single selection criteria which is too broad to be effective, or utilized data which is too old to address the current loss experience of their insureds.

Methodologies which use policy premium or experience modification as a single criterion have proven to be the most unreliable.

This finding which has been consistently noted from 1994 through 1999 has prompted the LCCU to proposed changes in the Loss Control regulations governing selection methodologies.

D. Program Needs -- Plan Evaluation

Currently, the Loss Control Certification Unit has a budget allocation for only three (3) plan evaluators. An increased allocation to the level of six (6) plan evaluators is necessary in order to more completely verify:

1. That the selection methodology utilized by each insurer has actually identified all of its insureds with the greatest workers' compensation losses and the most significant preventable health and safety hazards;
2. That the resources expended by the insurer to be in compliance with the loss control regulations have been accurately reported in the Annual Plans; and
3. That the delivery of services documented in the insurer's loss control files has actually produced the loss reductions submitted in subsequent Annual Plans

E. Effectiveness Evaluation

1. *Sample Summary*

In order to provide a quantitative profile of the effectiveness of the Loss Control Certification Program, the LCCU examined in 1999 a sample of insured employers' experience with the Loss Control Certification

Program, as reported by their workers' compensation insurers. The LCCU prepared a Sample Summary Report.<sup>22</sup>

2. *Sample Summary Limitations*

The Sample Summary is intended as a first step in analyzing the effectiveness of the Loss Control Certification Program. Due to the limitations inherent in insurer-provided data that is not consistent across insurer groups, the Sample Summary cannot be used to draw firm conclusions. However, the Division hopes that the Sample Summary will encourage discussion about how better to measure the effectiveness of the Loss Control Certification Program in the future.

3. *Major Findings from the 1999 Sample Summary*

- a. Loss control services delivered to targeted employers under the Loss Control Certification Program have had a significant positive impact in reducing the frequency of workplace injuries to California workers;
- b. The costs to insurers for the Loss Control Certification Program do not present an undue burden on insurers;
- c. The costs to insurers for the Loss Control Certification Program have declined, both as a percentage of insurers' direct written premium and as a percentage of insurers' total loss control costs;
- d. Competition under Open rating has caused significant turnover in the coverage of targeted employers, which has led to the exclusion of a number of targeted employers identified as eligible for loss control services;
- e. Adoption of a uniform selection methodology will assure a more consistent population of employers across insurer groups who would most benefit from loss control services under the Loss Control Program; and
- f. The Loss Control Certification Unit is meeting its mandate contained in Labor Code Section 6354.5.

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<sup>22</sup> See Attachment M for the text of the Sample Summary of Insured Employers' Experience with the Loss Control Certification Program, as Reported by Their Insurers.



#### IV. TARGETED INSPECTION AND CONSULTATION FUND (TICF) ASSESSMENT

##### A. TICF Assessment Process for Insured Employers

###### 1. 1995 TICF Assessment

The invoices for the first TICF Assessment were sent out by the Department of Industrial Relations in September of 1995.<sup>23</sup>

For the 1995 TICF Assessment, the Department of Industrial Relations followed the "indirect invoicing" procedure as set forth in Labor Code Section 62.9(c)(3). According to the "indirect invoicing" procedure, the billing of employers for TICF assessments was to be performed indirectly by the Department of Industrial Relations through the assessed employers' workers' compensation insurers.

On 5 September 1995, the Department sent lists of insureds to their insurers for billing purposes. When the insurer received the list from the Department, Section 62.7(c)(3) created a duty on insurers to notify their insureds of their obligation to pay the TICF assessment and to certify to the Department that their insureds have been invoiced.

However, Labor Code Section 62.9 left the format in which the billing notification was to occur up to the insurer. Labor Code Section 62.9(c)(3) states:

"[T]he insurer immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision." (underlining added).

Some insurers invoiced their insureds in a "manner and a format" which led to much confusion on the part of their insureds.

Examples of such billing practices included the following:

- Non-letterhead invoices;

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<sup>23</sup> Before the passage of SB 996 changing the assessment formula, some insurers had paid the assessments owed by their insureds as a percentage of premium according to the previous Labor Code Section 62.7. DIR began refunding these assessments to insurers in early 1996.

- No return address on envelope containing the invoice (which resulted in undeliverable and unreturnable mail that the postal authorities eventually destroyed);
- No explanatory letter accompanying the invoice as to the statutory basis for the assessment;
- No explanation on the invoice as to what services insureds, or TICF assessees, could expect for their money;
- No information on the invoice as to the year the ExMOD rate (it was 1994), or the payroll amount (it was 1992), was used to determine the 1995 TICF Assessment; and
- No instructions on how the insured would go about disputing their ExMOD or payroll figures.

Other insurers, upon receiving notices from the Department in September of 1995 to invoice their insureds with ExMODs of 1.25 or greater, were tardy in sending the invoices for the 1995 TICF Assessment to their insureds. Unfortunately, some invoices were sent as late as March of 1996, creating further confusion among employers who were assessed for both the first and second (sent out 12 March 1996) TICF Assessments.<sup>24</sup>

## 2. 1996 TICF Assessment

Before the 1996, or Second TICF Assessment, was implemented, the Director of the Department of Industrial Relations called a meeting on 8 December 1995 of interested parties to discuss the problems associated with the "indirect invoicing" method as set forth in SB 996. At this meeting, there was a strong consensus among employer, insurer and labor representatives that the Department should consider "directly invoicing" insureds for the next TICF assessment.

After evaluating the 1995 TICF Assessment, the DIR determined that invoicing insureds indirectly through their workers' compensation insurers was an ineffective way to implement the intent of SB 996. Furthermore, it created several administrative problems for the DIR, the insurer community and for insured employers who are assessed. Therefore, the 1996 TICF Assessment was implemented through a "direct invoicing" method on 12 March 1996.

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<sup>24</sup> The 1996 Assessment (covering the period 1 January 1996 to 31 December 1996) was sent out soon after the 1995 TICF assessment invoices were sent. This caused some confusion among employers subject to both the first and second assessment, i.e., have an ExMOD in 1994 and 1995 of 1.25 or more.

The Department received 1995 ExMod and 1993 workers' compensation payroll data from the WCIRB on 1 March 1996. After a few days of electronic data preparation, the Department sent on 12 March 1996, 11,387 invoice letters directly to insured employers.<sup>25</sup>

In addition, lists of insureds who were directly invoiced by the Department were sent to each insurer. Direct invoicing for the 1996 TICF Assessment, and subsequent assessments, has resulted in far less confusion for the insured employers and their insurers, and a more efficient TICF collection effort.

In fact, the success of the TICF collection effort in 1996 made it possible for DIR to meet its obligation under Labor Code Section 62.9(h) to repay a \$4 million loan from the State's General Fund. The purpose of this loan was to enable the Targeted Enforcement and Consultation Programs to begin hiring prior to commencement of the TICF collection.<sup>26</sup>

3. 1997 TICF Assessment

The third assessment--1997 TICF Assessment--was implemented by the "direct invoicing" method as in 1996. On 1 March 1997, 11,378 invoice letters were sent directly to insured employers.

4. 1998 TICF Assessment

The fourth assessment--1998 TICF Assessment--was the final assessment authorized by Labor Code Section 62.9 (as amended in 1995). On 2 March 1998, 11,812 invoice letters were sent directly to insured employers.<sup>27</sup>

5. 1999 TICF Assessment

The fifth assessment--1999 TICF Assessment--was implemented on 1 March 1999, as authorized by Labor Code Section 62.9 (as amended in 1998), and 13,019 invoice letters were sent to insured employers.

6. 2000 TICF Assessment

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<sup>25</sup> See Attachment P for a sample TICF Assessment Invoice/Offer Letter.

<sup>26</sup> "[T]he repayment of the loan that was made to the Cal-OSHA Targeted Inspection and Consultation Fund for the purposes of Section 62.7, and of interest on the loan, is hereby deferred until the director determines that sufficient funds in excess of the requirements of the programs specified by Section 62.7 are available in the fund to make that repayment, except that in no event shall this deferment extend beyond January 1, 1996." See Labor Code Section 62.9(h).

<sup>27</sup> Subsection (R) of Section 62.9 states that Section 62.9 "shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date." See Section II.C. for a discussion of AB 1957 in the 1997-98 Legislative Session, which extended the Department's TICF assessment authority to 1 January 2000, and Section II.D. for a discussion of AB 1655 in the 1999 Legislative Session which removed the "sunset provision" altogether from Labor Code Section 62.9.

The sixth assessment--2000 TICF Assessment--was implemented on 1 March 2000, as authorized by Labor Code Section 62.9 (as amended in 1999), and approximately 13,000 invoice letters were sent to insured employers.

B. TICF Collections for Insured Employers

1. Employer Population Subset for TICF Assessments

During the assessment years 1995 through 1999, there have been approximately 550,000 to 600,000 workers' compensation insured employers in California.

Of these, only about 20% meet the WCIRB requirements to have an experience modification rating (ExMOD) (based on employer size).

In 1995, 1996, 1997, 1998 and 1999, 11,650, 11,387, 11,378, 11,812 and 13,019 employers, respectively, were reported by the WCIRB to have had an ExMOD of 1.25 or more and were therefore subject to the TICF assessment under Labor Code Section 62.7 (in 1995) and Section 62.9 (1996 through 1999).

2. TICF Collections by the Department of Industrial Relations

Table IV-A indicates by year the number of TICF invoices sent to insured employers, their assessment account amount, and the amount collected by the Department of Industrial Relations as of 1 February 1999.

TABLE IV-A

TICF Invoices, Assessments and DIR Collections in Dollars  
for Insured Employers

Year	Invoices Assessment		DIR Collection <sup>28</sup>
1995	11,650	6,131,591	5,867,919
1996	11,387	6,066,152	5,883,306
1997	11,378	6,719,464	6,547,658
1998	11,812	6,911,618	6,628,304
1999	13,019	8,031,257	7,840,523
Totals	59,246	33,860,082	32,767,710 (96.8%)

3. TICF Collections by Franchise Tax Board, Non-Tax Debt Collection Unit

<sup>28</sup> TICF revenue collections are displayed on an accrual basis.

Labor Code Section 62.9(c)(5) provides that

"[T]he director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment..."

Thus, employers who failed to pay their TICF invoices after thirty (30) days receive a "Notice of Delinquency" from the Department. Delinquent TICF invoices (plus a 25% penalty) are then referred to the Franchise Tax Board, Non-Tax Debt Collection Unit, for collection. Labor Code Section 62.9(c)(6) provides that

"[I]f an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code."

Table IV-B indicates by year the number of delinquent TICF accounts, their original assessment account amount, their penalty account amount, the total assessment and the amount collected by the Franchise Tax Board as of 1 February 1999.

TABLE IV-B

TICF Accounts Referred, Assessment,<sup>29</sup>  
Penalties and FTB Collections In Dollars  
for Insured Employers

Year	Accounts	Assessment	Penalty	Total	FTB Collection
1995	1118	450,707.50	116,795.50	567,503.00	160,803.09
1996	808	364,935.42	91,233.86	456,169.28	149,519.96
1997	870	516,699.02	129,174.76	645,873.78	179,089.98
1998	920	501,002.10	125,250.53	626,252.63	186,668.69
1999	860	543,170.66	135,792.66	678,963.32	128,816.66
Totals	4576	2,376,514.70	598,247.31	2,974,762.01	804,898.38

C. TICF Assessment Process for Self-Insured Employers

<sup>29</sup> The referred account "assessment" amount represents the amount of money remaining unpaid at 45 days or more following the TICF invoice date. See Section II.B.3. for explanation of TICF collection procedures.

The TICF collection process for self-insured employers is specified by Title 8 regulations.<sup>30</sup> To initiate the TICF collection process, the Department's Self Insurance Program submits a list of self-insured employers to the DIR Director. These self-insured employers are selected for assessment according to the formula specified in 8 CCR Section 15601.7(e).<sup>31</sup> After receiving a TICF invoice, self-insured employers submit their TICF assessments to the Accounting Unit of the Department of Industrial Relations.

#### D. TICF Collections for Self-Insured Employers

Table IV-C indicates by year the number of TICF invoices sent to self-insured employers, their assessment account amount, and the amount collected by the Accounting Unit of the Department of Industrial Relations as of 1 February 1999.

TABLE IV-C

#### TICF Invoices, Assessments and DIR Collections in Dollars for Self-Insured Employers

Year	Invoices	Assessment	DIR Collection <sup>32</sup>
1995	144	826,341 <sup>33</sup>	826,341
1996	144	116,032	116,032
1997	77	182,700	182,700
1998	116	281,000	276,000
1999	103	246,400	246,400
Totals	584	1,652,473	1,647,473 (99.7%)

#### E. Consolidated Financial Statement

See Attachment O for a Financial Statement for the Loss Control Certification Program and the Targeted Enforcement and Consultation Programs.

<sup>30</sup> See Attachments J and K for text of Title 8 regulations applicable to the TICF assessment process for self-insured employers with equivalent ExMOD of 1.25 or greater.

<sup>31</sup> 8 CCR Section 15601.7(e) states: "For each private self insurer, the Manager shall calculate an individual 1-year number of indemnity claims per 100 employees, using information reported by each self-insurer on its last full year Self-Insurer's Annual Report submitted for the reporting period immediately prior to the current budget year. In this calculation, the manager shall divide the total number of indemnity claims reported in the most recent claim year by the total number of California employees reported, with the result multiplied by 100. Any self-insurer with less than 100 total employees shall be considered to have 100 employees for purposes of this calculation."

<sup>32</sup> TICF revenue collections are displayed on an accrual basis.

<sup>33</sup> The 1995 TICF assessment figure represents a gross figure and does not account for \$582,465 in refunds made as a result of changes from 1995 to 1996 in the self-insured assessment methodology. See Attachments J and K.

## F. Alternative TICF Funding Methodologies

### 1. Introduction

In 1995, SB 996 required the DIR Director to report to the Legislature in an Interim (1997) and Final (1998) Report about methods--other than the current legislatively-mandated ExMOD methodology--as the basis of assessing employers for the Targeted Inspection and Consultation Fund. (See Labor Code Section 62.9(k)).

In 1995, the Department formed an informal discussion group to review "one or more alternative methods of funding the Cal/OSHA Targeted Inspection and Consultation Programs...". Representatives of the Department of Industrial Relations, the Workers' Compensation Insurance Rating Bureau (WCIRB), the business community, organized labor and the insurance industry were invited to discuss alternative ways to identify employers for purposes of targeted enforcement inspection and consultation fund assessments.

### 2. Specific Funding Alternatives

As a result of these, and other, discussions over the past three years, the following proposals were offered in the 1997 Report to the Legislature as alternatives to support the Targeted Enforcement and Consultation Programs in the Division of Occupational Safety and Health.

#### a. Retention of Experience Modification Rating (ExMOD)

Despite the limitations of using an experience modification rating (ExMOD) to identify employers with a higher than average number of preventable occupational safety and health hazards in their establishments, support still exists for retaining the current ExMOD-based funding formula as a basis for assessing "high hazard" employers.

Those who support retention of the ExMOD argue that the ExMOD is the most widely used measure of "hazard" status that currently exists in California.

The contributing factors which are used to calculate an employer's ExMOD are generally understood and accepted by the employer community.

Supporters point out that many employers use the ExMOD rating to design injury and illness reduction programs for their businesses.

ExMOD proponents, however, do acknowledge that the chief disadvantage of the ExMOD for purposes of the targeted inspection and consultation assessment is that only a small proportion of insured California employers who might have "high hazard" establishments currently have an ExMOD,<sup>34</sup> i.e., approximately 110,000.

Of these, only approximately 11,000, or about 10%, meet the definition of "high hazard" employers found in Labor Code Section 62.9, i.e., employers with ExMODs of 1.25 or greater.

In using the current TICF funding "ExMOD-based" methodology, an assessed employer's average assessment is approximately \$590.<sup>35</sup>

b. Frequency-Based Alternative (FMOD)

ExMOD supporters acknowledge that increasing the proportion of employers subject to a TICF assessment would reduce the amount that each individual employer would have to be assessed to support the program. In order to increase the subset population of assessed employers and to make the assessment more representative of "high hazard" employers, some observers have suggested that a "frequency-based" methodology be used for TICF assessments.<sup>36</sup>

The basic idea behind the "frequency-based" funding alternative is to use workers' compensation injury and illness claims-made counts to generate a list of insured-employers with the highest claim counts, or frequency, for purposes of assessment. If such a list of employers were developed for assessment purposes, using the 1.25 or greater cutoff, the current ExMOD-based subset population of assessed employers would increase six-fold from 11,000 employers to approximately 60,000.<sup>37</sup>

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<sup>34</sup> Employers with less than seven (7) employees are generally not rated by experience factors. Since 80% of California employers have less than 6 employees, the majority of California employers are not experience rated.

<sup>35</sup> The "average assessment per employer" calculation is based on a total yearly average TICF assessment of \$6,500,000. Thus, the assessment per employer equals the average annual TICF assessment divided by the number of employers assessed by the particular methodology. In the case of an "ExMOD-based" methodology that number is approximately 11,000.

<sup>36</sup> A "frequency-based methodology" is based on workers' compensation injury and illness claims -made. It was developed as a methodology for ranking insured employers for premium pricing purposes as an alternative to the current "ExMOD-based" methodology by the WCIRB for the California Department of Insurance. After the "frequency-based methodology was developed, public hearings were held on the question of whether it should replace the ExMOD methodology. At the conclusion of these hearings, the Commissioner of Insurance declined to utilize the "frequency-based" methodology.

<sup>37</sup> The number of employers assessed under the FMOD methodology is provided by the Workers' Compensation Insurance Rating Bureau.



Individual assessments would decline from \$590 per assessed employer to \$108 per assessed employer.

c. Combined Experience Modification and Frequency-Based Alternative (ExMOD/FMOD)

Some have suggested combining the ExMOD and FMOD methodologies to create a subset population of employers who are identified as "high hazard" by both methodologies.

Specifically, the "ExMOD/FMOD Combination" alternative involves combining the subset of employers who have both an ExMOD and FMOD of 1.25 or greater (approximately 8,500) with the subset of employers who have an FMOD of 1.25 or greater and who are not experience rated (approximately 27,000). This creates a subset of approximately 35,500 employers.<sup>38</sup> Individual assessments using a combined ExMOD and FMOD methodology would be approximately \$183 per assessed employer.

d. Across-the-Board Alternative

An "across-the-board" funding methodology would assess all California employers an amount based on a pre-determined percentage of the workers' compensation insurance premium dollar paid. The assessment would be the same amount for every California employer regardless of ExMOD or any other indicator of hazard status. Since the insured employer base would be approximately 550,000 employers, individual assessments, using the across-the-board" methodology would be approximately \$10 per assessed employer.

The "across-the-board" funding alternative is viewed by many as "too broad" in that it does not differentiate between "high hazard" and "low hazard" employers. Moreover, others consider that lack of differentiation among the employer population to be fundamentally "unfair." They believe that it is not fair for "non-high hazard employers" to subsidize consultative assistance services that are to be directed primarily at "high hazard employers."

Some believe, though, that the consultative and compliance services provided as a result of a TICF assessment benefits all

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<sup>38</sup> The ExMOD/FMOD combined approach reduces the subset population of employers identified solely by the FMOD methodology by one-third because employers with ExMODs less than 1.25 are not included in the subset population. The number of employers assessed under the ExMOD/FMOD methodology is provided by the Workers' Compensation Insurance Rating Bureau.

employers by helping those employers who receive assistance to achieve a reduction in their work-related injuries and illnesses and workers' compensation losses thereby lowering premium rates overall. In addition, it is pointed out that many so-called "non-high hazard" employers already make use of consultative assistance for the very purpose of continuing to remain non-high hazard employers.

Finally, others believe that the across-the-board funding alternative has merit because it eliminates the administrative complexity and resentment associated with an employer assessment system which relies on the ExMOD as an indicator of hazard status.<sup>39</sup>

e. General Fund Augmentation

Another funding alternative would be to eliminate the statutory Targeted Inspection and Consultation Fund levy and replace the total assessment amount needed to support the Targeted Inspection and Consultation Programs with an augmentation of monies from the State of California General Fund.

The General Fund Augmentation alternative would eliminate the special fund approach which "targets" individual employers for assessment based on pre-selected claims-paid criteria." Many in the occupational safety and health community believe there is no single indicator in widespread use today which can accurately differentiate between low and high hazard employers.

The General Fund Augmentation alternative may give more flexibility to implement the statutory goals of the Targeted Inspection and Consultation Programs, i.e., providing compliance and consultative services to the subset of California employers who most need such services by decoupling program funding from a type of "pre-selected" service provision. See Sections V. and VI.B. for a discussion of employer selection methods for purposes of provision of compliance and consultative services.

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<sup>39</sup> Many assessed employers express the belief that using their ExMOD to make a determination that they are "high hazard" employers is unfair because they believe that the reason that they have a high ExMOD is because their insurer did not vigorously contest the compensation claims filed by their employees. These employers feel that basing the TICF assessment on the ExMOD is "doubly unfair."

## V. TARGETING FOR COMPLIANCE AND CONSULTATION ACTIVITIES

### A. California Statutory Mandates

AB 110 mandates that the Division establish two programs:

- A targeted inspection program (Section 6314.1); and
- A targeted consultation program (Section 6354).

These programs are to be supported fiscally by "assessments" on the subset of insured and self-insured California employers who have an ExMOD of 1.25 or greater (or, if self-insured, have an equivalent ExMOD of 1.25 or greater). See Section 62.9(b)(1)).

Read separately, each of these three statutory sections which provide the basis for the targeted assessment program and targeted inspection and consultation programs contain distinct formulas for selecting (or targeting) employers for (1) funding, (2) inspection (compliance) activities; and (3) consultative assistance activities.

### B. California Statutory Employer Targeting Formulas

#### 1. First Statutory Formula -- Assessed Employer Funding

Labor Code Section 62.9(b)(1) states that

"In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (f)."

Thus, insured employers with an ExMOD of 1.25 or greater, and private self-insured employers with an equivalent ExMOD, are required to support fiscally the targeted inspection and consultation programs based on their status as "high hazard" employers.

#### 2. Second Statutory Formula -- Targeted Employer Inspection

Labor Code Section 6314.1(a) states that

"The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations as defined in Section 11750.1 of the Insurance Code; histories

of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates."

Any employer identified through the data sources specified in Section 6314.1(a), who is a member of "a high hazardous" industry, and who has "a high incidence of preventable occupational injuries, illnesses and workers' compensation losses," is statutorily subject to the targeted inspection program.

Note that there is no express language in Section 6314.1 which "couples" the subset of employers identified through the assessed funding methodology, i.e., ExMOD, found in Section 62.9 with the set of employers identified by the targeted inspection formula in Section 6314.1. Also, note that the statute does not mandate that a particular method be used for identifying industries as "high hazard."

### 3. Third Statutory Formula -- Targeted Employer Consultation

Labor Code Section 6354(a) states that

"The division shall, upon request, provide a full range of occupational and health consulting services to any employer or employee group. These consulting services shall include: (a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records."

Section 6354 does not specifically "target" any type of employer. Rather, it specifies that a program be developed to identify "categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring." However, a data link is provided to Section 6314.1 in that Section 6354 states that

"[T]he hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1."

Note that there is no express language in Section 6354 which "couples" the subset of employers identified through the assessed funding methodology found in Section 62.9(b)(1) (TICF funding formula) with the set of employers identified by the targeted consultation formula in Section 6354.

C. Legislative Analyst Office (LAO) 1994-95 Opinion

1. Coupling TICF Funding Targeting with Consultation

In 1994, the Legislative Analyst's Office (LAO), when reviewing the Governor's Budget for 1994-95 for the California Legislature, recommended that:

"... the DOSH report to the Legislature during budget hearings to ensure that the program implementation is consistent with legislative intent and address issues concerning (1) the overlap, if any, between assessed employers and targeted employers, (2) the means for identifying high hazard industries and employers, and (3) the process for assigning work to compliance staff and to consultation staff." See LAO Report, 1994, page G-74.

The LAO expressed concern that if the Division ignored the TICF assessment formula in selecting or "targeting" employers for inspection and/or consultation services, little or no overlap might occur between employers who were "assessed" and those employers who were provided targeted inspection and consultation services.

Any lack of overlap between these two groups was viewed by the LAO as contrary to the intent of the Legislature in passing AB 110. The LAO based their opinion in part on the fact the TICF funding was often described during the legislative adoption process as a type of "user funding." As such, the LAO believed that assessed employers should have the right of "first refusal" for the services which they are funding.

Simply put, the LAO's reading of Section 62.7/62.9, Section 6314.1 and Section 6354--the three statutory employer selection formulas--represents a view that the three sections were enacted as "coupled" sections. According to this view, the only employers which should be offered TICF-supported consultative services by the Division, for example, should be those employers who have contributed an assessment to the TICF. TICF funds should not be spent on providing consultative assistance service to non-assessed employers.

Aside from the LAO's statutory interpretation based on legislative intent, considerations of fairness also argue for the "coupling" of Labor Code Sections 62.9 (funding) and 6354 (consultative services).

It seems fair to offer consultative assistance first to employers who are funding the provision of that assistance (and who have been identified as "high hazard" in the first place), and then, if sufficient resources exist, to non-assessed employers.

In fact, it would seem unfair to assess one subset of California employers, because their ExMOD is greater than the ExMODs of other employers, and then provide consultative assistance (designed to lower the ExMOD) to a subset of non-assessed employers whose ExMOD may not be as high as the assessed subset.

The selection of employers for consultative assistance based not on whether they have contributed a TICF assessment (a decoupled approach) can result in significant resentment among employers who have paid a TICF assessment of up to \$2500 per employer and want to be offered "something for their money," but are unable to receive such service because those limited resources are serving employers who have not paid a TICF assessment. Unless fully coupled with funding, these employers end up providing "user" funding, but for users other than themselves! Thus, it seems that the coupled approach is the best approach for the targeted consultation program.

Therefore, the Division accepted the "coupling" view to the extent that consultative assistance services supported by TICF assessments should be offered first to assessed employers.

## 2. Coupling of TICF Funding Targeting with Inspection

One of the chief disadvantages of coupling funding with targeted inspection is that it focuses compliance resources on a group of employers whose "high hazard" status is based solely on the experience modification rating--a workers' compensation-based indicator. Although in lengthy historical use by the workers' compensation insurance industry, the ExMOD is not an accurate predictor of "high hazard" status for purposes of a compliance inspection. The reason for this is that the ExMOD is a poor "real-time" indicator of an establishment's likelihood to have occupational injuries, illnesses or workers' compensation losses which are violative of a Title 8 regulation.

The primary reason is that the ExMOD is a three year rolling average which reflects what happened at the establishment three to five years before the ExMOD is calculated. Compliance inspections which are conducted based on such a "historical" view of a workplace yield little in the way of hazards which are currently violative of Title 8 of the California Code of Regulations.

Most importantly, an ExMOD does not distinguish between "claims" of injuries and illnesses and "occupational hazards" which are violative of Title 8 regulations. For instance, certain types of compensation claims can greatly increase the ExMOD, but falsely identify an employer as having a high incidence of injuries, illnesses or workers' compensation losses which

are preventable<sup>40</sup> by an employer's adherence to a current Title 8 occupational safety and health standard, e.g., stress claims.

The Division's experience to date is that less than 5% of employers identified by the ExMOD as "high hazard" are in an industry which, as a whole, has higher than average rates of occupational injuries and illnesses. Furthermore, the on-site inspection of these "assessed" employers' establishments reveals few, if any, violations of current Title 8 standards.

Therefore, "decoupling" funding selection from compliance inspection targeting is a more efficient use of resources. In fact, AB 110 provided that the Division could utilize for inspection selection:

"[A]ny method deemed to be appropriate that identifies injury and illness rates" for "targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses." See Labor Code Section 6314.1.

If the statutory funding and compliance sections are "coupled," only "assessed" employers can be targeted for a compliance inspection. Practically speaking, though, assessed employers would hardly consider a "compliance" inspection to be a beneficial "service" from government.<sup>41</sup>

Instead of "coupling" the funding and targeted inspection sections of AB 110, the Division learned in 1995 that the TICF-generated compliance resources can be utilized best by identifying high hazard establishments not by whether they have been assessed, but by a combination of industry injury and illness incidence data and establishment level injury and illness data during an "on-site" compliance inspection. The Division believes that Section 6314.1 grants it the authority to do so. See Section VI. Furthermore, "decoupling" funding selection from targeted inspection selection allows the Division to target its compliance resources to the most hazardous workplaces, resulting in more protection for California workers without disadvantaging employers who may have been assessed but whose establishments are not truly "high hazard."

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<sup>40</sup> Although no definition of the term "preventable" was provided in §6314.1, the Division understands the term "preventable" to mean that there exists a feasible and effective means of reducing or eliminating the risk of occupational injuries, illnesses or workers' compensation losses.

<sup>41</sup> Compliance inspections are not designed to "assist" employers in the same sense as a consultative visit. In fact, the results of a compliance inspection (at least initially) can be quite negative for the employer in that he or she may be issued citations carrying substantial monetary penalties, the employer may incur reputational injury, and also may see their workers' compensation premium raised because of their "experience" being cited by Cal/OSHA. However, the abatement of hazards which results from the compliance inspection is a positive outcome for the employees, and assists the inspected employer in developing a safer workplace.

#### D. Federal Targeting Programs

##### 1. Federal OSHA's Maine 200 Program -- Workers' Compensation Claim Data

In 1993, Federal OSHA's Augusta, Maine Area Office selected 200 Maine employers who had very high numbers of workers' compensation claims. The goal of the "Maine 200" Program was to target OSHA's resources on this group of "high hazard" employers in order to reduce the number of injuries and illnesses which were causing Maine's overall high number of workers' compensation claims. OSHA invited targeted employers to develop an action plan based on OSHA's site-specific analysis of their workers' compensation claims data and offered them "compliance assistance" with their action plans. Targeted employers who declined to produce action plans were placed on a primary inspection list.

Even though OSHA showed that injury and illness rates declined in participating establishments (although changes in Maine's workers' compensation laws also took place during the same period of time), OSHA terminated the Maine 200 Program in 1997 without implementing it nationally. The belief was that targeting based solely on workers' compensation data was inadequate.

##### 2. Federal OSHA's Cooperative Compliance Program (CCP) and the OSHA Data Initiative -- Injury and Illness Data from OSHA Log 200s

The Maine 200 Program was replaced by the Cooperative Compliance Program (CCP) which utilizes establishment level Log 200 data as its targeting methodology as opposed to workers' compensation claim data (as in the Maine 200 Program).

The OSHA Data Initiative involves the collection of Log 200s (containing entries of all recordable work-related injuries and illnesses) directly from employers. The Department of Labor's Bureau of Labor Statistics (BLS) has collected Log 200s from a sample of employers by SIC Code for a number of years, but has held such establishment data submissions as confidential.

The BLS Annual Survey of Nonfatal Occupational Injuries and Illnesses includes the Lost Workday Incidence Rate by SIC Code as well as other injury and illness rates by SIC Code. However, data the BLS reports to OSHA and the public is industry-specific, but not establishment-specific. Therefore, the BLS data cannot serve as an establishment-level targeting methodology for OSHA inspection or consultation purposes. The OSHA Data Initiative is an attempt to develop a targeting system based on



establishment-level data which was not based on workers' compensation claims.

E. Comparison of Federal OSHA and Cal/OSHA Targeting

1. Use of the ExMOD or Other Single Workers' Compensation Insurance-Based Indicator of "Hazard" Status

a. ExMOD

The experience of the California targeted programs has been that using workers' compensation claim data exclusively, especially the ExMOD, as a targeting tool has false positive and false negative errors associated with it. For instance, the ExMOD identifies some employers for compliance targeting whose employees have no injuries and illnesses preventable by compliance with Title 8 standards (false positive error). The ExMOD also fails to identify other employers who have low ExMODs, but who still have significant hazards in their workplace, e.g., oil refineries and chemical plants or employers in the underground economy who do not have workers' compensation insurance (false negative error).

b. Claims Frequency

The use of a "claims frequency" data (expressed as a rate using "total hours worked" or "total number of employees employed by employer") may be a more accurate workers' compensation data indicator--at least for those employers who have workers' compensation insurance. See Section IV.F.2.b. on Alternative Funding Methodologies or Footnote No. 7 on the Workers' Compensation Information System (WCIS).

2. Separation of "Compliance Assistance" from Consultation

Federal OSHA's failure to programmatically separate inspection from consultation activities (as in Maine 200 Program) has been criticized as enforcement "dilution" and as contrary to the purpose of the Federal Occupational Safety and Health Act. The California targeted programs maintain a strict separation of compliance and consultation activities.

3. Effective Targeting Must Be Based on Multiple Sources

Using a combination of databases for targeting, e.g., workers' compensation claim frequency data, OSHA Log 200 injury and illness data, information about the underground economy, data about the presence

of "hazards" (as opposed to injuries/illnesses or claims about injuries/illnesses), and other sources of targeting information, provides the most effective targeting strategy. No one targeting source can be the basis for an effective statewide targeting program.

## VI. TARGETED INSPECTION AND TARGETED CONSULTATION PROGRAMS

### A. Overview of Targeted Programs

In order to implement the targeted inspection and targeted consultation programs as a single program, the Division of Occupational Safety and Health established the "High Hazard Employer Program" in 1994.

Beginning in 1997, however, the Targeted Inspection Program ceased to use the list of TICF-assessed employers as a primary targeting methodology, because the experience of the Targeted Inspection Program was that a high experience modification rating did not necessarily indicate the presence of workplace injuries and illnesses preventable by compliance with Title 8 standards and regulations.

The Targeted Consultation Program continues to provide consultative assistance to employers who accept the offer of such assistance in the TICF Invoice Letter.

### B. Overview of Employer Selection Criteria

#### 1. Targeted Consultation

##### a. Employers Assessed for the First Time

Utilizing a coupled approach for TICF funding and targeted consultation, every employer who was sent a TICF Assessment Invoice and Offer Letter (see Attachment P) from 1995 through 1998 was also offered consultative assistance. Beginning in 1999, the offer of consultative assistance was incorporated into the TICF Assessment Invoice Letter.

Approximately 5% to 10% of employers accept the offer of consultative assistance from Cal/OSHA. Most choose to seek assistance from their workers' compensation insurer.<sup>42</sup> These employers are provided targeted consultative assistance during the assessment year. See Section VII.

##### b. Employers Assessed in Multiple Years Who Have Significantly Elevated ExMODs

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<sup>42</sup> Only a minority of high ExMOD employers accept an offer of assistance from Cal/OSHA, but the majority of these employers are not members of a high hazard industry as defined by lost workday incidence data (see Tables VI-A, VI-B, VI-C and VI-D).

Beginning with the 4th TICF Assessment in 1998,<sup>43</sup> a subset of TICF-assessed employers with significantly high ExMODs was selected for application of targeted consultation services. These employers were selected by means of the following criteria:

- (1) Each year all TICF-assessed employers with ExMODs of 200% or greater in the policy year prior to the assessment year; and
- (2) Who had not voluntarily sought consultative assistance from Cal/OSHA; and

This subset of employers were believed to be in the greatest need of assistance in identifying and eliminating the hazards which were causing their increasing ExMOD. The subset of employers with significantly elevated ExMODs number approximately 600 to 700 per assessment year. See Section VII. for information on this subset of TICF assessed employers.

c. Consultative Special Emphasis Projects

Consultation Special Emphasis Projects assist high hazard industries by working with high hazard industry employers in a cooperative effort to identify and reduce the cause of the industry's high incidence of injuries, illnesses and workers' compensation claims. The Consultative Special Emphasis Projects Program, like the Targeted Inspection Program, utilize the Lists of Highest Hazard Industries (see Tables VI-A, VI-B, VI-C and VI-D).

2. Targeted Enforcement

Utilizing a decoupled approach for TICF funding and targeted inspection, employers are selected for targeted compliance by means of an "on-site selection method."

a. Traditional Method for Employer Selection

The traditional method of selecting employers for programmed inspections which is used by occupational safety and health programs at the federal and state levels begins with selection of high hazard industries. Industries are first selected from injury and illness data assembled by the U.S. Department of Labor, Bureau of Labor Statistics.<sup>44</sup> After industries with high injury and illness

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<sup>43</sup> Selection of employers who have significantly high ExMODs from the general subset of TICF-assessed employers will be continued on a yearly basis as a means of reducing injuries, illnesses and workers' compensation claims among those employers in the "highest hazard" status.

<sup>44</sup> In California, state-specific data by industry is obtained from the California Injury and Illness Survey Data, which is compiled yearly by the Division of Labor Statistics and Research (DLSR) in the Department of Industrial Relations.

incidence rates are selected, using three or four digit Standard Industrial Classification (SIC) Codes, employer-members of that industry are selected at "random" for inspection.<sup>45</sup>

Using the traditional selection method, the selected establishment's membership in a high hazard industry is "assumed" to be a sufficient predictor of the hazard status of the establishment itself to warrant being targeted for a compliance inspection. However, if the particular employer targeted for a compliance inspection is one with an injury and illness incidence rate which is lower than his or her industry average, then they will be "mistargeted" for an inspection. This type of "false positive targeting error" results in the identification of employers who belong to a hazardous industry, but who are not themselves "high hazard" employers.

Thus, the traditional employer selection method for compliance inspections using injury and illness data grouped by industrial classification is inefficient in that compliance resources are not directed to the workplaces which could benefit most from a compliance inspection. It is not hard to understand that one of the reasons for the compliance targeting formula found in Section 6314.1-- specifying "establishment-level" selection--was to provide for a more efficient application of compliance resources than does the traditional, industry-level, approach.

b. "On-Site" Establishment Targeting

In order to overcome partially the false-positive targeting error problem, the Division has developed the "on-site" method for selecting establishments for comprehensive programmed inspections. The "on-site" establishment targeting method used by the Targeted Inspection Program utilizes both industry-level injury and illness incidence rate data and establishment-level injury and illness incidence rate data.

Employers are first selected from a list of employer establishments in a particular hazardous industry. Then, an employer is screened "on-site" by compliance personnel to determine if the employer is a high hazard member of that industry by means of an on-site review of their injury, illness and loss data and other regulatorily-required programs, e.g., Injury and Illness Prevention Program (IIPP). Based on the outcome of the on-site review process, a determination can be made as to whether that particular

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<sup>45</sup> Specific establishments are usually selected at random from sources such as the Dun & Bradstreet establishment listings, or from the telephone directory or other primary data sources.

establishment is "high hazard" and should receive a comprehensive compliance inspection.

C. Highest Hazard Industry Selection

1. Source Data for Highest Hazard Industry Lists

On an annual basis, the Division of Occupational Safety and Health compiles a list of the "highest hazardous industries." Industries are selected based on their total lost workday case incidence rate arising from nonfatal occupational injuries and illnesses--often referred to as the "LWDI."

The source data for determining highest hazard industry is provided by the Division of Labor Statistics and Research (DLSR) in their Annual Survey of Nonfatal Occupational Injuries and Illnesses. The Division of Occupational Safety and Health uses Table 1 of the Annual Nonfatal Survey, which is entitled "Incidence Rates of Nonfatal Injuries and Illnesses by Industry and Selected Case Types."

To be included on the Division's List of Highest Hazard Industry List, industries are ranked by calculating how much their LWDI rate exceeds the average for California employers in the private sector (expressed as a percentage). Only private sector industries with an LWDI which is greater than 175% (or greater than 200% for the 1999-2000 and 2000-2001 Lists) of the LWDI for private sector employers in California are included on the Division's Annual List of Highest Hazard Industries.

2. Utilization

The Targeted Inspection Program and the Targeted Consultation Program utilize the Division's Annual List of Highest Hazard Industries as a basis for their programmatic activities.

3. 1996-1997 List of Highest Hazard Industries

Using data from the 1994 DLSR Nonfatal Occupational Injury and Illness Survey,<sup>46</sup> seventeen (17) industries had LWDI rates greater than 175% of the private sector industry average of 4.0.

These 17 industries had on average an LWDI rate of 9.5 and were composed of approximately 34,000 employers and 520,000 workers. See

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<sup>46</sup> The Annual Survey of Nonfatal Occupational Injuries and Illnesses is released by DLSR in January of the year following the year during which the injuries occurred, e.g., the 1994 Annual Survey is released in January of 1996, the 1998 Survey is released in January of 2000.

Table VI-A for the 1996-1997 List of Highest<sup>47</sup> Hazard Industries based on DLSR's 1994 Nonfatal Occupational Injuries and Illnesses (published in January of 1996).

4. 1997-1998 List of Highest Hazard Industries

Using data from the 1995 DLSR Nonfatal Occupational Injury and Illness Survey, fifteen (15) industries had LWDI rates greater than 175% of the private sector industry average of 3.7. These 15 industries have (on average) an LWDI rate of 10.1 and were composed of approximately 47,036 employers and 512,900 workers. See Table VI-B for 1997 List of Highest<sup>48</sup> Hazard Industries based on DLSR's 1995 Report of Nonfatal Occupational Injuries and Illnesses by SIC Code (which was published in January of 1997).

Twelve (12) industry entries appear both on the 1995-1996 List (based on 1994 DLSR data) and the 1997-1998 List (based on 1995 DLSR data)<sup>49</sup> and three (3) industries entries are new to the 1997-1998 List.<sup>50</sup> Five (5) industries entries no longer appear.<sup>51</sup>

5. 1998-1999 List of Highest Hazard Industries

Using data from the 1997 DLSR Nonfatal Occupational Injury and Illness Survey, fifteen (15) industries had LWDI rates greater than 200% of the private sector industry average of 3.5. These 15 industries have (on average) an LWDI rate of 9.8 and are composed of approximately 27,404 employers and 333,500 workers. See Table VI-C for the 1998-1999 List of Highest<sup>52</sup> Hazard Industries based on DLSR's 1997 Nonfatal Occupational Injuries and Illnesses (which was published in January of 1999).

Eight (8) industry entries appear both on the 1997-1998 List (based on 1995 DLSR data) and the 1999-2000 List (based on 1997 DLSR

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<sup>47</sup> For 1996-1999, the term "highest" is defined as a lost workday incidence rate of 175% or greater than the average LWDI of 4.0 for all private industries in California.

<sup>48</sup> For 1997-1998, the term "highest" is defined as a lost workday incidence rate of 175% or greater than the average LWDI of 3.7 for all private industries in California.

<sup>49</sup> These are (by SIC Code) 176, 2034, 205, 2086, 2421, 243, 371, 373, 421, 449, 495, and 805.

<sup>50</sup> These are (by SIC Code): 171, 335 and 3949.

<sup>51</sup> These are (by SIC Code): 2015, 202, 2033, 2084 and 251.

<sup>52</sup> For 1998-1999, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.5 for all private industries in California.

data)<sup>53</sup> and seven (7) industries entries are new to the 1999-2000 List.<sup>54</sup> Seven (7) industries entries no longer appear.<sup>55</sup>

6. 1999-2000 List of Highest Hazard Industries

Using data from the 1998 DLSR Nonfatal Occupational Injury and Illness Survey, twenty (20) industries had LWDI rates greater than 200% of the private sector industry average of 3.2. These 20 industries have (on average) an LWDI rate of 8.7 and are composed of approximately 26,710 employers and 398,900 workers. See Table VI-D for the 1999-2000 List of Highest<sup>56</sup> Hazard Industries based on DLSR's 1998 Nonfatal Occupational Injuries and Illnesses (which was published in January of 2000).

Seven (7) industry entries appear both on the 1998-1999 List and the 1999-2000 List<sup>57</sup> and thirteen (13) industries entries are new to the 2000-2001 List.<sup>58</sup> Eight (8) industries entries no longer appear.<sup>59</sup>

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<sup>53</sup> These are (by SIC Code) 176, 2034, 2086, 2431, 3731, 449, 495 and 805.

<sup>54</sup> These are 172, 175, 2033, 204, 2396, 252, and 343.

<sup>55</sup> These are 171, 2051, 2421, 335, 371, 3949 and 421.

<sup>56</sup> For 1999-2000, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.2 for all private industries in California.

<sup>57</sup> These are (by SIC Code) 175, 176, 2086, 3731, 449, 495, and 805.

<sup>58</sup> These are 2026, 2034, 2051, 206, 2084, 2421, 2434, 249, 254, 289, 3273, 353 and 371.

<sup>59</sup> These are 172, 2033, 2034, 204, 2396, 2431, 252 and 343.



TABLE VI-A

## 1996-1997 HIGHEST HAZARD INDUSTRY LIST

SIC Code	Industry	LWDI	#Employers	#Employees
421	Trucking & courier services, except air	14.1	8,700	148,600
2086	Bottled & canned soft drinks	12.7	600	9,000
373	Ship & boat building & repairing	12.5	1,700	10,300
176	Roofing, siding & sheet metal work	12.3	8,000	20,700
2421	Sawmills & planing mills, general	11.3	40	11,500
449	Water transportation services	10.4	1,000	12,100
495	Sanitary services	9.3	400	23,000
2033	Canned fruits & vegetables	8.6	10	21,500
205	Bakery products	8.5	800	21,900
202	Dairy products	8.1	900	14,100
243	Millwork, plywood & structural members	8.1	4,400	17,800
805	Nursing & personal care services	8.1	4,100	119,400
2015	Poultry slaughtering & processing	7.8	20	9,700
251	Household furniture	7.4	1,000	24,300
371	Motor vehicles & equipment	7.2	1,100	32,200
2034	Dehydrated fruits & vegetables	7.1	170	9,800
2984	Wines, brandy & brandy spirits	7.1	1,200	14,200
Totals	17 SIC Codes	9.5	34,000	520,000

TABLE VI-B

## 1997-1998 HIGHEST HAZARD INDUSTRY LIST

<u>SIC Code</u>	<u>Industry</u>	<u>LWDI</u>	<u>Employers</u>	<u>#Employees</u>
373	Ship & boat building & repair	19.5	1,700	10,100
2086	Bottled & canned soft drinks	14.9	600	8,400
176	Roofing, siding & sheet metal work	12.8	8,000	23,100
2431	Millwork	10.8	155	9,000
3949	Sporting & athletic goods	10.3	1056	12,200
495	Sanitary services	10.1	400	23,900
2421	Sawmills & planing mills, general	10.0	40	11,300
449	Water transportation services	9.9	1,000	12,900
421	Trucking & courier services, except air	8.8	8,700	156,700
2034	Dehydrated fruits, vegetables, soups	8.0	170	9,300
371	Motor vehicles & equipment	7.9	1,100	32,500
2051	Bread, cake & related products	7.7	48	17,500
171	Plumbing, heating & air conditioning	7.5	19899	54,000
805	Nursing & personal care services	7.0	4,100	121,300
335	Nonferrous rolling & drawing	6.9	68	10,700
Totals	15 SIC Codes	10.1	47,036	512,900

TABLE VI-C

## 1998-1999 HIGHEST HAZARD INDUSTRY LIST

SIC Code	Industry	LWDI	Employers	#Employees
3731	Ship building & repairing	16.5	86	10,900
2086	Bottled & canned soft drinks	14.6	166	10,100
343	Plumbing & heating	12.2	452	7,400
449	Water transportation services	11.8	1,989	13,500
2431	Millwork	11.7	399	10,400
2034	Dehydrated fruits, vegetables, soups	9.5	163	8,700
252	Office furniture	8.8	309	7,700
805	Nursing & personal care facilities	8.5	5,162	120,300
176	Roofing, siding & sheet metal work	8.2	4,654	25,500
204	Grain mill products	7.9	225	8,200
175	Carpentry	7.8	6,375	34,600
495	Sanitary services	7.8	2,045	24,000
172	Painting & paper hanging	7.5	5,017	23,900
2396	Automotive & apparel trimmings	7.2	167	10,100
2033	Canned fruits & vegetables	7.0	195	18,200
Totals	15 SIC Codes	9.8	27,570	367,400

TABLE VI-D

## 1999-2000 HIGHEST HAZARD INDUSTRY LIST

<u>SIC Code</u>	<u>Industry</u>	<u>LWDI</u>	<u>#Employers</u>	<u>#Employees</u>
3731	Shipbuilding & repairing	14.7	1,700	7,300
2086	Bottled & canned soft drinks	12.8	600	10,200
206	Sugar & confectionery products	12.1	300	10,500
495	Sanitary services	10.1	400	23,600
2434	Wood Kitchen Cabinets	9.1	200	8,500
3273	Ready-Mixed Concrete	9.0	200	8,400
289	Misc. Chemical Products	9.0	150	6,900
371	Motor vehicles & equipment	8.9	1,100	35,700
249	Misc. Wood Products	8.2	400	8,800
353	Constr.& Related Machinery	8.0	350	8,300
254	Partitions & Fixtures	7.8	400	9,100
449	Water transportation services	7.7	1,000	12,100
2421	Sawmills & planing mills, general	7.6	40	10,400
2084	Wines, brandy & brandy spirits	7.2	1,200	18,900
2034	Dehydrated fruits & vegetables	7.0	170	7,800
176	Roofing, siding & sheet metal work	6.9	8,000	20,700
805	Nursing & personal care services	6.8	4,100	123,000
2026	Fluid Milk	6.7	600	8,500
2051	Bread & Cake	6.6	800	19,900
175	Carpentry & Floor Work	6.6	5,000	40,300
Totals	20 SIC Codes	8.7	26,710	398,900

D. Targeted Inspection and Consultation Policy and Procedures

1. Programmatic Goals

- Select employer establishments in high hazard industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses;
- Offer and provide to the employers selected consultative assistance in eliminating or reducing preventable work-related injuries and illnesses and workers' compensation losses;
- Inspect those employers who are members of industries on the Highest Hazard Industry List and whose establishments contribute the most to the elevated injury and illness indicators for that industry;
- Evaluate the employer's implementation of the recommendations developed during the provision of a consultative assistance visit and abatement of violations found during the provision of a targeted inspection; and
- Develop educational materials and training programs designed to aid employers in eliminating or reducing preventable work-related occupational injuries and illnesses and workers' compensation losses and repetitive motion injuries.

2. Employer Contacts

a. TICF Assessment Invoice

Insured employers with the highest ExMODs are first contacted through the TICF Assessment Invoice/Offer Letter, which is sent annually to all TICF invoiced employers.<sup>60</sup>

b. Offer of Consultative Assistance

Even though the primary purpose of the TICF Assessment Invoice Letter is to explain the TICF Assessment, the assessed employer is also offered targeted consultative assistance in identifying and eliminating the hazards that are causing their elevated ExMOD.

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<sup>60</sup> See Attachment P for Sample TICF Assessment Invoice/Offer Letter.

### 3. Targeted Consultation

#### a. Assignment

From 1995 through 1997, the Targeted Consultation Program depended on assessed employers to voluntarily request assistance. When an employer accepted the offer of consultative assistance, the employer was then assigned to receive assistance from a consultant working in the Targeted Consultation Program. Beginning in 1998, employers with the highest ExMOD rates (i.e., 200% or above) are contacted directly by the Targeted Consultation Program and assigned a consultant, who is responsible for providing consultative assistance. If the employer refuses, their name is given to the Targeted Enforcement Program for an enforcement inspection.

#### b. Purpose

The purpose of targeted consultative assistance is to evaluate the cause(s) of the employer's preventable work-related injuries, illnesses and workers' compensation losses. Targeted consultative assistance focuses on the areas, processes, conditions or machinery which are pertinent to the employer's preventable work-related injury, illness or loss rate and not solely on conditions which are violative of Title 8 occupational safety and health standards.

#### c. Development of Recommendations and an Action Plan

As a result of the targeted consultative visit, a set of recommendations or an Action Plan is developed for employer implementation. Follow-up visits are arranged as appropriate per the employer.

#### d. Efficacy Measures

As a part of targeted consultative assistance, various efficacy outcome measures are obtained from employers who have accepted targeted consultation. Among these measures are: (1) injury and illness recordable incidence rate; (2) injury and illness severity rate; (3) number and type of preventable work-related injuries and illnesses; (4) number of lost workdays and number of days with restricted work activity; and (5) pertinent data about workers' compensation claims made and costs per claim.

#### 4. Targeted Education

##### a. Responsibilities

Education assistance for the targeted enforcement and consultation programs is provided by the Education Unit, an organizational entity within Cal/OSHA Consultation. The Education Unit's responsibilities include:

- (1) Advising Targeted Consultation Program offices about the availability of workplace safety materials, especially educational and instructional materials relating to acute and chronic musculoskeletal, nerve and other ergonomic injuries and illnesses, including acute and chronic injuries to the back;
- (2) Developing educational aids for reducing or eliminating safety and health hazards causing employee injuries and illnesses and aids to assist consultation personnel on how to effectively evaluate an employer's injury and illness recordkeeping;
- (3) Establishing model injury and illness prevention training programs to prevent repetitive motion injuries for employer use in such industries and work activities such as Video Display Terminal (VDT) use, construction, agriculture, manufacturing and materials handling; and
- (4) Disseminating the model programs to employers, employer associations, workers' compensation insurers, and employee organizations on request.

##### b. Activities

To date, the Education Unit has conducted the following activities for the Targeted Enforcement Program and the Targeted Consultation Program:

##### (1) Publications

- *Four Step Ergonomics Program for Employers with Video Display Terminal (VDT) Operators*
- *A Back Injury Prevention Guide for Health Care Providers*

- Complying with the New Confined Space Standard and Permit Requirements -- *Is It Safe To Enter a Confined Space?*
- *Lockout/Blockout* (Spanish)
- *Workplace Injury & Illness Prevention Model Program for Employers with Intermittent Workers* (Spanish)
- *Workplace Injury & Illness Prevention Model Program for Employers with Intermittent Workers In Agriculture* (English and Spanish)
- *Farm Labor Contractor Guide to Health and Safety*
- *Managing Stress Arising from Work*
- *How to Train New Employees*
- *Fall Prevention Packet for Employers and Workers in Construction*
- *Easy Ergonomics-- A Problem-Solving Approach to Workplace Ergonomics*
- *Hazard Communication Guide*
- *Farm Labor Contractor Guide to Health and Safety* (in Spanish)
- *Cal/OSHA Agricultural Safety and Health Inspection Project (ASHIP) Publications* (in English and Spanish)

(2) Video Library

From 31 October 1995 through 31 December 1999, 9,687 video tapes from the Consultation Unit's Video Library were distributed to employers for employee training purposes. In 1999, 2,252 health and safety video tapes were distributed to 1,292 employers and employee groups.



(3) Outreach Seminars for Employers

Since 1995, the Education Unit has made 221 presentations to approximately 11,389 California employers on topics pertaining to occupational safety and health. These 11,389 employers employ approximately 656,773 workers. In 1999, 60 presentations were made to approximately 5,636 employers. These 5,636 employers employ approximately 50,773 workers.

Presentation topics include various occupational safety and health issues including the following: ergonomics, back injury prevention, musculoskeletal disorders, agricultural health and safety, fall protection and confined space.

The Education Unit has also developed several training aids to be used during outreach training (workshops, seminars, presentations). The materials developed include power point presentation packets, interactive educational tools, and other assortments of training tools.

(4) Health and Safety Publications Distribution

In 1999, more than 142,816 health and safety publications were mailed from the Education Unit. This represents 35,194 separate requests for publications.

(5) Research and Development

During 1999, the Education Unit has engaged in a number of "R&D" projects including mentoring with industry and labor; working with other educators in conducting focus groups; collaborating with other educational providers during the content development stage of new publication development (e.g., respiratory protection, ergonomics for the small employer, safety and health guide for construction and bloodborne pathogen exposure control plan); and provided staff development in areas of publication layout, editing and image insertion.

5. Targeted Enforcement

a. Targeted Enforcement Inspection

(1) High Hazard Industry/Employer Programmed Inspection

Any employer who is a member of one of the highest hazard industries (see Tables VI-A, VI-B, VI-C and VI-D) is subject to a comprehensive enforcement inspection if an analysis of the establishment's injury and illness incidence (total LWDI) rate reveals that the establishment has an LWDI which is the same or higher than their industry LWDI average.

(2) Complaint or Accident Referral from Cal/OSHA Enforcement Unit

Any formal complaint (or serious informal complaint), or accident occurring in an establishment which is in an industry on the List of Highest Hazard Industries may be referred by a Cal/OSHA Enforcement Unit District Office to the targeted enforcement program (High Hazard Unit) for the purpose of responding to the complaint or accident, but only if, upon telephonic referral, the High Hazard Unit verifies to the District Office that it has the capability to respond within the required statutory time frames.

NOTE: When responding to any complaint or accident referred to the targeted enforcement program, the High Hazard Unit shall also conduct, in addition to the complaint inspection or accident investigation, a programmed inspection of the place of employment if the establishment has an LWDI incidence rate which is the same or higher than the LWDI of that establishment's industry.

b. Targeted Consultation Referrals

(1) Refusal-to-Accept Targeted Consultation

Any employer with an ExMOD rate of 200% or greater (i.e., significantly elevated ExMOD) who declines an offer of targeted consultative assistance from a consultant of the Targeted Consultation Program, shall be referred, through the Chief, to the targeted enforcement program for a targeted enforcement inspection.

(2) Failure-to-Cooperate with Targeted Consultation

Any employer with an ExMOD rate of 200% or greater who initially accepts an offer of consultative assistance, but

later demonstrates non-cooperation with the provision of that assistance, and serious hazards are present in their workplace, shall be referred, through the Chief, to the targeted enforcement program for a targeted enforcement inspection.

(3) Failure-to-Implement Targeted Consultation Recommendations

Any employer who initially accepts an offer of targeted consultative assistance and cooperates initially with the provision of that assistance, but is subsequently found on a follow-up visit to have failed to implement the recommendations jointly developed by the employer and Cal/OSHA Consultation, shall be referred, through the Chief, to the targeted enforcement program for a targeted enforcement inspection.

## VII. PROGRAMMATIC ACTIVITY AND EFFICACY DATA

### A. Statutory Language

Until 1999, Labor Code Section 62.9 required that the Interim (1997) and Final (1998) Reports submitted by the Department contain five types of "activity" measures, and one "outcome" measure, as follows:

#### 1. Activity Measures

- Number and type of targeted employers inspected;
- Number and type of follow-up inspections conducted;
- Number and type of violations observed and corrected;
- Number and type of enforcement actions taken;
- Total number of program staff hours expended in enforcement, administration, and support for the program; and

#### 2. Efficacy Measures

- Overall assessment of the efficacy of the programs, supported by workplace injury and illness data.

### B. How Do You Measure "Efficacy"?

The "efficacy" requirement reflects the Legislature's concern over the effectiveness of governmental occupational safety and health programs in general, and the Targeted Inspection and Consultation Programs in particular. Since the Programs are supported by employer assessments and not by General Fund monies, it is understandable that the "benefits" of targeted inspection and consultation, in comparison to their costs, must be demonstrated.

Given the passage of SB 996, the challenge is to find ways to measure how well the Targeted Consultation and Inspection Programs achieve the goals contained in the Workers' Compensation Insurance Reform Legislation of 1993 (AB 110).

The 1993 reforms of the California workers' compensation insurance system required Cal/OSHA to identify California employers "in high hazardous industries with highest incidence of preventable occupational injuries and illnesses and workers' compensation losses" and assist them through consultative and compliance interventions in eliminating or reducing their workplace injuries, illnesses and workers' compensation losses. How, then, can the targeted consultation and inspection program's efficacy be measured?

The use of a research tool called "outcomes analysis" is one way to do so. The use of outcomes analysis can assist government providers of occupational safety and health services in assessing the effectiveness of both their compliance and consultative interventions.

As applied to occupational safety and health, outcomes analysis is a way of assessing how effectively a particular compliance and consultative activity results in the prevention of workplace hazards, in the prevention of the injuries, illnesses and fatalities which workplace hazards cause, and in the direct and indirect costs associated with the occurrence of workplace injuries, illnesses and fatalities.

Even though many different types of outcome measures exist, the following represent the three major categories of outcome measures, and some examples of each, which are applicable to targeted activities.

1. Injury and Illness Prevention Measures

Measures of various hazards or adverse health effects (fatalities, injuries or illnesses) that are prevented (or do not occur) as the result of a compliance or consultative intervention.

Examples of Injury and Illness Prevention Measures include the following:

- Number of hazards eliminated
- Number of fatalities prevented
- Number of injuries and illnesses prevented
- Number of lost workdays reduced
- Number of workers' compensation losses eliminated

2. Economic Measures

Measures which determine how cost-effective are various compliance and consultative interventions. Usually, a comparison of the costs of injuries and illnesses--direct, indirect and intangible costs--with the benefits which accrue to the employer and the employee from injury and illness prevention is utilized.

Examples of Economic Measures include the following:

- Reduction in medical costs associated with workplace injuries/illnesses or workers' compensation losses

- Reduction in lost productivity costs associated with workplace injuries/illnesses or workers' compensation losses
- Reduction in the cost of workers' compensation claims
- Reduction in workers' compensation insurance premium costs
- Reduction in indicators used by the workers' compensation insurance industry to assess premium pricing, e.g., experience modification rating
- Reduction in lost wages to employees

### 3. Service Satisfaction Measures

Measures of the impact of a particular compliance or consultative intervention on employer and employee satisfaction and on the quality of occupational safety and health in the workplace.

Examples of Service Satisfaction Measures include the following:

- Satisfaction of employers with targeted services
- Satisfaction of employees with targeted services
- Increases in safety awareness among targeted employers and employees
- Increases in the effectiveness of targeted employer's IIP Programs
- Number of employers and employees taught how to recognize and correct hazard(s) from a targeted intervention
- Improvements in injury and illness recordkeeping from a targeted intervention
- Improvements in workers' compensation claims recordkeeping from a targeted intervention

How does outcomes analysis differ from the traditional way that occupational safety and health programs assess compliance and consultative performance? The traditional way of assessing the performance of a governmental occupational safety and health program is to count how many compliance and consultative "activities" occur. Among the myriad of compliance or consultative activities which can be counted are the following:

- Number of inspections performed/consultation surveys conducted
- Number of violations cited (both compliance and consultation)
- Number of cited violations which are classified as "serious" (both compliance and consultation)
- Amount of civil penalties proposed per violation (compliance)
- Amount of proposed penalties which are collected (compliance)

These activity measures impart some information about the functioning of the program, but they are only indirect measures of what a governmental occupational safety and health program should be accomplishing. Standing alone, activity measures suggest only that (and only at one point in time, i.e., the inspection day) a "cited" establishment is "allegedly"<sup>61</sup> not in compliance with particular Title 8 Safety Orders.

Also, activity measures offer little long term guidance on how effective a governmental occupational safety and health program is in making workplaces safer by preventing fatalities, injuries, illnesses and workers' compensation losses.

However, activity measures are sometimes the only measure of a particular type of compliance or consultative intervention. For instance, compliance interventions have historically been triggered primarily in the Cal/OSHA program by an employee complaint being filed, the occurrence of an accident or referral from another governmental agency. Neither type of intervention allows the program to assess compliance effectiveness well. Workplaces identified by a complainant are not necessarily those workplaces which contain a high proportion of hazards or have a high injury or illness rate. Inclusion in an effectiveness analysis of interventions conducted in such workplaces can create a false-positive outcome, i.e., the compliance intervention did not result in a true reduction in workplace hazards, injuries, illnesses or workers' compensation losses even though it seemed to. Similarly, consultative on-site surveys are triggered by an employer request--not by the objectively-identified hazards, injuries or illnesses or workers compensation claims. Employers with workplaces which contain the highest proportion of workplace safety and health fatalities, injuries, illnesses and workers' compensation losses are the employers who request consultative assistance least often or not at all.

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<sup>61</sup> The Division can only "allege" that a particular Title 8 Safety Order has been violated. Only when the proposed citation is "affirmed" by a final order of the Occupational Safety and Health Appeals Board does the allegation legally become a violation. If the employer does not contest a citation, the citation becomes a final order of the Appeals Board by operation of law.

Many believe that "outcomes analysis" paints a clearer picture of how well an occupational safety and health program is functioning than does "activity" analysis. In sum, outcomes analysis is concerned with how well the major components of an occupational safety and health program--compliance and consultative interventions--actually achieve the basic mission of the program--injury and illness prevention, injury and illness cost reduction or improvements in the quality of occupational safety and health in the workplace.

C. Activity Measures

1. Administrative -- Number of TICS Invoice/Offer Letters Sent by Year

TABLE 1

NUMBER OF TICS INVOICE/OFFERS SENT BY YEAR

1995	11,650
1996	11,387
1997	11,378
1998	11,812
1999	13,019
2000	13,000
Total	72,246

2. Targeted Consultation Activities<sup>62</sup>

a. Completed Targeted Consultations By Employer By Year

TABLE 2A

TARGETED CONSULTATIONS BY EMPLOYER BY YEAR

Year	Number of Employers
1994	249
1995	978
1996	1,080
1997	773
1998	680
1999	329 <sup>63</sup>

<sup>62</sup> All Activity Measures appearing in Tables 2A-3G reflect targeted activities on a calendar year basis.

<sup>63</sup> Beginning in 1999, the number of employers shown in Table 2A as receiving targeted consultative assistance are exclusively those employers who have significantly elevated ExMODs and who received extensive on-site assistance from an assigned consultant. In the years prior to 1999, the number of employers indicated as receiving targeted consultation



b.                      Total                      4,089  
Number and Type (By SIC Code) of Targeted Consultations By Employer  
By Year

TABLE 2B

NUMBER AND TYPE (BY SIC CODE) OF TARGETED CONSULTATION  
EMPLOYERS BY YEAR

SIC	94	95	96	97	98	99
0111-0783 Agriculture	0	27	53	33	44	6
1511-1799 Construction	44	336	227	110	105	32
2011-3999 Manufacturing	187	374	339	255	231	62
4011-4971 Trans/Comm/Elec/ Gas & San.Servs	3	51	138	78	46	17
5012-5199 Wholesale Trade	0	29	50	40	34	31
5211-5999 Retail Trade	4	30	74	57	32	26
6011-6799 Finance, Insurance & Real Estate	0	5	18	22	21	19
7011-8999 Services	9	126	180	176	165	124
9221-9229 Public Adm	2	0	1	2	2	12

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were employers who may have received both telephonic and on-site assistance and who did not necessarily have significantly elevated ExMODs.

Total	249	978	1080	773	680	329
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c. Number of Follow-Up Targeted Consultations By Year

TABLE 2C

NUMBER OF FOLLOW-UP TARGETED CONSULTATIONS BY YEAR

Year	Number of Employers
1994	81
1995	297
1996	203
1997	100
1998	49
1999	24
Total	754 <sup>64</sup>

d. Number of Employers with Significantly Elevated ExMODs Provided Targeted Consultation Assistance

TABLE 2D

COMPLETED TARGETED CONSULTATION ASSISTANCE VISITS BY EMPLOYER WITH SIGNIFICANTLY ELEVATED ExMODs<sup>65</sup>

Year	Number of Employers
1998	156
1999	329
	485

e. Number and Classification of Violations Observed and Corrected During Targeted Consultations

<sup>64</sup> The number of employers who have received a follow-up consultative assistance visit in Table 2C (754) is smaller than the number of employers indicated in Table 2A as receiving on-site consultative assistance (4,089) because consultative assistance follow-up visits are performed only at the employer's request. Beginning in 1999, follow-up visits have been conducted for 7.3% of targeted employers receiving targeted consultation.

<sup>65</sup> These employers represent a highly selected subset of the total number of TICF-assessed employers and have ExMODs of 200% or greater in the year just prior to the assessment year. Beginning in 1999, these employers are the subset of assessed employers who will be contacted for targeted consultation assistance and if these employers refused, they will be subject to a targeted enforcement inspection.

TABLE 2E

NUMBER AND CLASSIFICATION OF VIOLATIONS OBSERVED AND CORRECTED  
DURING COMPLETED ON-SITE TARGETED CONSULTATION ASSISTANCE

	Serious <sup>66</sup>	General	Regulatory	Total
1994	1,418	379	51	1,848
1995	3,695	996	221	4,912
1996	2,097	866	82	3,045
1997	1,301	516	81	1,898
1998	286	181	29	496
1999	1,330	2,969	86	4,385
Total	10,127	5,907	550	16,584

- f. Most Frequently Observed Hazards and Violations During Targeted Consultations by Type (1995-1999)

TABLE 2F

MOST FREQUENTLY OBSERVED TITLE 8 VIOLATIONS CORRECTED  
DURING ON-SITE TARGETED CONSULTATION ASSISTANCE

<u>Title 8 Section</u>	<u>Description</u>
3203	IIP Program
6151	Fire extinguisher
2340	Electrical installation
5194	Hazard communication
5110	Ergonomics
2500	Flexible cords/cables
3220	Emergency Action Plan
14301	Injury and Illness Recordkeeping
3221	Fire Prevention Plan
3241	Live loads

- g. Most Frequently Observed Loss-Related Deficiencies during Targeted Consultations

TABLE 2G

MOST FREQUENTLY OBSERVED LOSS-RELATED DEFICIENCIES

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<sup>66</sup> It should be noted when comparing the number of violative conditions characterized as serious by targeted consultation program to the number characterized as serious by targeted inspection program that a "serious" characterization by targeted consultation does not have to be supported by evidentiary proof of employee exposure, as does a serious violation characterized as such by targeted enforcement.

## DURING ON-SITE TARGETED CONSULTATION ASSISTANCE

**Injury and Illness Prevention Program.** Lack of programs, incomplete programs, attempting to use a program that was not relevant (specific) to the type of business, and the lack of program implementation were found. Safety and health inspections were infrequently performed or performed by inexperienced personnel. Hazard recognition was poor. Accident investigations were incomplete and lead to faulty assumptions that the incidents were unstoppable--result was the continued existence of the hazard. Some employers believed that by completing workers' compensation forms comprised the sum total of their investigation requirements.

**Slips, Trips and Falls.** There was a wide variety of slipping, tripping, and fall hazards identified and related to losses. These included tools, product, waste, water, and other obstructions left on floors or working surface; blocked or narrowed walkways; improper guardrails or other fall protection devices on elevated locations; accessing overhead and other awkward storage locations; insecure footing for ladders and mobile stairs; improperly designed and/or maintained stairs; improper handrails and stair rails; and other improperly maintained floor or work surface conditions.

**Safe Work Practices.** Improper work practices attributable to a lack of training, lack of supervision and assessment of work conditions, and a lack of commitment to safe work practices by both employees and supervisors resulted in a wide range of accidents and losses. These improper work practices included a lack of procedures for a particular job or improper procedures, improper use of or lack of the appropriate tools and equipment for the job, and the lack of or improper use of personal protective equipment.

**Materials Handling.** The majority of musculoskeletal injuries occurred due to lifting and moving product or materials. Most of the injuries involved non-repetitive tasks. Cumulative trauma disorders (CTD) were mostly related to carpal tunnel syndrome and involved the repetitive motions associated with keyboard use.

**Recordkeeping and Loss Trend Analysis.** As noted above, many accident investigations were inadequate. This was often compounded by failure to maintain the Log of Occupational Injuries and Illnesses (Log 200). Alternatively, when the Log 200 was kept, it was often filled out erroneously and/or contained omissions. Therefore, the Log 200s could not and were not used as a trend indicator, their intended use. The result often times was the lack of correction of the root causes of losses.

**Chemical Hazard Communication Program.** Employees (and many employers) were unaware of the hazards they were exposed to. The result was improper procedures, lack of appropriate control measures and either the lack of or improper use of personal protective equipment. Most employers, where a Chemical Hazard Communication Program applied, lacked a formalized written program or adequate employee training.

**Machine and Tool Guarding.** A broad range of machine and tool guarding hazards was found that had resulted in losses, e.g., design as well as maintenance and use of the safety devices, potential machine and tool guarding hazards were identified.

3. Targeted Enforcement Activities

a. Number of Targeted Enforcement Inspections by Employer

TABLE 3A

TARGETED ENFORCEMENT INSPECTIONS BY EMPLOYER BY YEAR

Year	Number of Employers
1994	207
1995	396
1996	270
1997	423
1998	540
1999	499
<hr/>	
Total	2,335

- b. Type of employers provided targeted enforcement inspections by SIC Code

TABLE 3B

NUMBER AND TYPE (BY SIC CODE) OF TARGETED INSPECTION  
EMPLOYERS BY YEAR

SIC	94	95	96	97	98	99
0111-0783 Agriculture	0	7	3	1	5	19
1511-1799 Construction	4	113	91	100	131	45
2011-3999	119	165	93	210	240	148
Manufacturing						
4011-4971 Transportation, Communications, Electric, Gas & Sanitary Services	4	21	18	40	54	44
5012-5199 Wholesale Trade	20	4	8	6	9	23
5211-5999 Retail Trade	10	20	6	10	26	97
6011-6799 Finance, Insurance & Real Estate	0	8	1	3	7	37
7011-8999 Services	48	57	50	53	68	52
9221-9229 Public Administration	2	1	0	0	0	34
Total	207	396	270	423	540	499

- c. Number of Follow-up Targeted Enforcement Inspections by Employer by Year

TABLE 3C

ON-SITE TARGETED FOLLOW-UP ENFORCEMENT INSPECTIONS BY EMPLOYER

Year	Number of Employers
1994	0
1995	7
1996	26
1997	48
1998	146
1999	77
Total	304 <sup>67</sup>

- d. Number and Classification of Violations Observed and Corrected during Targeted Enforcement Inspections

TABLE 3D

NUMBER AND CLASSIFICATION OF VIOLATIONS OBSERVED AND ABATED DURING TARGETED INSPECTIONS

	SWR <sup>68</sup>	OTS <sup>69</sup>	TOTAL
1994	533	949	1,482
1995	957	1,454	2,411
1996	437	774	1,211
1997	803	958	1,761
1998	1,049	1,647	2,696
1999	962	1,224	2,186
Total	4,741	7,006	11,747 <sup>70</sup>

<sup>67</sup> Follow-up inspections are low in comparison to the number of initial inspections performed because: (1) follow-up inspections are usually only conducted on a sample basis to verify that serious, willful or repeat violations have been abated; and (2) a follow-up inspection cannot be conducted while violations cited during the initial inspection are under appeal.

<sup>68</sup> The category "SWR" includes Serious, Willful and Repeat violations.

<sup>69</sup> The category "OTS" includes General and Regulatory violations.

<sup>70</sup> All violations issued in 1994 through 1999 have been abated except for approximately 663 violations which are still under appeal.

- e. Number and Type of Enforcement Actions taken during Targeted Enforcement Inspections by Year

TABLE 3E

ENFORCEMENT ACTIONS TAKEN DURING TARGETED INSPECTIONS BY YEAR

	Warrants	OPUs <sup>71</sup>	Info Memos <sup>72</sup>	Citations
1994	0	0	53	668
1995	2	9	123	1,467
1996	2	3	41	491
1997	1	33	42	1,011
1998	4	4	61	946
1999	3	5	74	1,370
Total	12	54	394	5,351

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<sup>71</sup> An "Order Prohibiting Use" is an enforcement action taken against an employer based on the presence of an imminent hazard. It is the policy of the Division to determine the presence of a dangerous workplace condition or practice which constitutes an imminent hazard to employees, to warn the employer and the employees about the presence of an imminent hazard, and to prohibit entry (by means of an Order Prohibiting Use) into the place of employment, or any part thereof, containing the imminent hazard, or prohibit use of a machine, device, apparatus or equipment which constitutes an imminent hazard.

<sup>72</sup> An "Information Memorandum" is a type of enforcement document used by the Division to direct the employer's attention to a workplace condition which has the potential of becoming a violation of a Title 8 Safety Order violation in the future if employee exposure to the violative condition occurs.



f. Violation per Inspection Ratio as Compared Between Targeted Enforcement Inspections and Non-targeted Inspections

TABLE 3F

VIOLATION PER INSPECTION RATIO  
FOR TARGETED AND NON-TARGETED INSPECTIONS<sup>73</sup>

	Targeted	Non-Targeted
1994	7.16	1.80
1995	6.09	2.08
1996	4.48	2.23
1997	4.16	2.25
1998	4.99	2.10
1999	4.38	2.10
Cumulative	5.21	2.09

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<sup>73</sup> The "violation per inspection ratio" is a measure used in occupational safety and health enforcement agencies to measure the effectiveness of the targeting method used to select the inspected establishment. It is a measure of the "enforcement yield" from the inspection, i.e., how productive the inspection was in finding and citing workplace conditions which are violative of a Title 8 occupational safety and health standard. As can be seen from the Table, the "violation per inspection ratio" for targeted inspections (which are based on the highest hazard industry-establishment targeting methodology) is consistently higher than the ratio from non-targeted inspections (based on receipt of an employee complaint or the occurrence of an industrial accident).

- g. Most Frequently Observed Hazards and Violations during Targeted Enforcement Inspections by type

TABLE 3G

MOST FREQUENTLY OBSERVED TITLE 8 VIOLATIONS CORRECTED  
DURING TARGETED INSPECTION

<u>Title 8 Section</u>	<u>Description</u>
3203	Injury and Illness Prevention Program
6151	Portable fire Extinguishers
2340.23	Openings
2340.16	Workspace About Electric Equipment
4070	Guarding
5144	Respiratory Protective Equipment
461	Permits to Operate
5194	Hazard Communication
2340.22	Identification of Equipment
4002	Moving Parts of Machinery or Equipment

#### D. Efficacy Assessment

Until 1999, Labor Code Section 62.9(i)(1)(F) required that information be provided about the "overall assessment of the efficacy of the programs, supported by workplace injury and illness data."

##### 1. Efficacy Measures in General

During the performance of targeted inspections and consultations, data for several efficacy measures were collected for the years 1994 through 1998 (as availability permitted). In general, data for the measurement of programmatic efficacy have been collected whenever a programmatic contact is initiated with a targeted employer, i.e., during the provision of consultative assistance or during an inspection.

Subsequent to the contact (usually in the calendar year following the initial contact), efficacy measures have been collected again. By gathering pre-intervention and post-intervention data, the relative effectiveness of the consultative assistance or inspection intervention at the establishment level can be demonstrated by comparing the performance of targeted employers with other California employers.

Two types of "workplace injury and illness data" are measured for the Report: (1) injury rates; and (2) workers' compensation loss indicators.

##### a. Injury and Illness Rates

###### (1) Lost Work Day Case Incidence Rate (LWDI);

The "Lost Work Day Case Incidence Rate (LWDI)" represents the number of injuries and illnesses which result in "days-away-from work" and/or "days of restricted work activity" per 100 full-time workers. The LWDI is calculated by multiplying the total number of employee injuries and illnesses resulting in lost workdays (derived by totalling columns 2 and 9 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year. The LWDI is the most common measure of an industry's relative "hazard" status used by federal and state occupational safety and health agencies for industry targeting.

###### (2) Total Injury/Illness Recordable Case Incidence Rate (TRI);

The "Total Injury and Illness Recordable Case Incidence Rate (TRI)" represents the number of employee injury and illness cases which result in

lost work days, medical treatment (other than first aid), restriction of work or motion, loss of consciousness or transfer to another job per 100 full-time workers. The TRI is calculated by multiplying the total number of OSHA recordable injuries and illnesses (derived by totalling columns 2, 6, 9 and 13 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year.

(3) **Total Injury and Illness Severity Rate (TSR);**

The "Total Injury and Illness Severity Rate (TSR)" represents the number of days charged for lost workdays cases (days-away-from-work cases and days-of-restricted-work-activity cases) per 100 full-time workers. The TSR is calculated by multiplying the total number of OSHA recordable days away from work and days of restricted work activity (derived by totalling columns 4, 5, 11 and 12 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year.

(4) **Musculoskeletal Injury and Illness Recordable Case Incidence Rate (MRI);**

The "Musculoskeletal Injury and Illness Recordable Case Incidence Rate (MRI)" represents the number of employee musculoskeletal injury cases which result in medical treatment (other than first aid), restriction of work or motion, loss of consciousness or transfer to another job per 100 full-time workers. The MRI is calculated by multiplying the total number of OSHA recordable musculoskeletal injuries and illnesses (derived by totalling columns 2, 6, 9 and 13 on the OSHA Log 200 for musculoskeletal injuries only) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year. Since musculoskeletal injuries and illnesses account for the greatest proportion of workers' compensation claims of high severity, the MRI would be particularly useful in assessing the efficacy of the targeted consultation and inspection programs.

(5) **Musculoskeletal Injury and Illness Severity Rate (MSI);**

The "Musculoskeletal Injury and Illness Severity Rate (MSI)" represents the number of days charged for lost workdays cases (days-away-from-work cases and days-of-restricted-work-activity cases) which resulted from musculoskeletal injuries and illnesses per 100 full-time workers. The MSI is calculated by multiplying the total number of OSHA recordable days away from work and days of restricted activity (derived by totalling columns 4, 5, 11 and 12 on the OSHA Log 200 for musculoskeletal injuries and illness only) by 200,000 employee-hours (i.e., the total number of hours worked by all employees during the calendar year). Since musculoskeletal injuries and illnesses account for the greatest portion of workers' compensation claims of high severity (most costly), the MSI would be particularly useful in assessing the efficacy of the targeted consultation and inspection programs.

b. Workers' Compensation Loss Indicators

(1) Number of workers' compensation claims made (CM);

The "Number of Workers' Compensation Claims Made (CM)" is a relatively straightforward measure of how effective any workplace injury and illness reduction program can be, and refers to those claims made by employees as a result of workplace injury or illness. Data on claims made is obtained from the targeted employer.

(2) Medical costs associated with claims paid (MC);

The "Medical Costs Associated with Claims Paid (MC)" represents the direct medical costs of workplace injuries and illness measured in dollars. It measures the "severity" of workplace injuries and is useful as an effectiveness measure. Data on the medical costs associated with claims paid is obtained from the targeted employer.

(3) Disability costs associated with claims paid (DC).

The "Disability Costs Associated with Claims Paid (DC)" represents the disability costs of workplace injuries and illnesses measured in dollars. It measures the "severity" of workplace injuries and is useful as an effectiveness measure. Data on the medical costs associated with claims paid is obtained from the targeted employer.

(4) Experience Modification Rating

Comparative measurement of an employer's workers' compensation insurance experience modification rating, can also be used to assess the relative efficacy of targeted consultation and compliance interventions.<sup>74</sup>

ExMOD data is obtained from the targeted employer or, with the employer's permission, from the employer's insurer.

2. 1995-96 Reported Efficacy Measures

In the 1997 Interim Report, efficacy data based on a small sample of employers who had completed targeted consultative assistance indicated that consultative assistance had a positive effect on a selected

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<sup>74</sup> "Since 1921, experience rating has been an important element of the California workers' compensation insurance pricing system. Today, more than 110,000 employers qualify and approximately 80% of all workers' compensation insurance premium is affected by this merit rating plan... Essentially, the experience rating formula is a mathematical equation which compares the value of claims that are expected for an employer (expected losses) with the final or estimated cost of claims that were actually incurred (actual losses) during the experience period. In order to reflect the statistical credibility of an employer's experience in the experience modification and to restrict the fluctuation of an employer's experience modification from year to year (especially for small employers), a number of factors are introduced into the formula which modify the expected losses and actual losses for those employers whose experience is not fully credible." See Workers' Compensation Experience Rating: A Supplement to an Employer's Guide to the California Experience Rating Plan. WCIRB, p.13.

establishment's injury and illness incidence rates and workers' compensation loss indicators.

In a sample of 50 employers who had received consultation assistance in 1994 and 1995, the total recordable injury and illness incidence and severity rates decreased by approximately 10%, comparing data obtained at pre- and post-consultative assistance visits. In addition, the average number of workers' compensation claim cases, and the dollar cost associated with those cases (medical and disability costs), also decreased for the sample of employers receiving consultative assistance in 1994 and 1995.

3. 1997 Reported Efficacy Measures

In the 1998 Final Report, efficacy data was reported based on a sample of 456 employers who had completed a targeted consultation during the years 1994-97 and who returned the data questionnaire, and a sample of 203 employers who had undergone a targeted compliance inspection during the years 1994-97 and who returned the data questionnaire. The efficacy data reported in 1998 indicated that the targeted consultation and inspection programs had a positive effect on a selected establishment's injury and illness incidence rates and workers' compensation loss indicators.

4. 1998-99 Reported Efficacy Measures

In the 1999 and 2000 Reports, a sample of 886 employers who completed a targeted consultation during the years 1994 through 1998 were asked to provide yearly injury, illness and workers' compensation claims data on the efficacy of the targeted consultation visit. Four hundred and seventy two (472) employers who received targeted consultative assistance responded to the 1999 survey. The efficacy data reported in the 2000 Report indicates that the targeted consultation programs had a positive effect on a selected establishment's injury and illness incidence rates and workers' compensation loss indicators. Tables 15A and 15B illustrate efficacy data for targeted consultation.

For the 2001 Report, the Division has decided to modify the measurement of efficacy (injury and illness rates and loss indicators) of employers receiving a targeted enforcement inspection for two reasons: (1) the survey rate of return from inspected employers has been unacceptably low for two years (1998 and 1999), i.e., around 20%; and (2) verification of data that is self-reported is not possible without a follow-up inspection. For the 2001 Report (covering calendar year 2000 inspections), any changes in injury and illness rates, loss indicators or other measures of efficacy, will

be collected at the time of a follow-up enforcement inspection instead of through self-reported survey data. Consequently, no new efficacy data will be reported in the 2000 Report for the calendar year 1999, i.e., Tables 15C and D remain the same as in the 1999 Report.

a. Targeted Consultation Program -- Efficacy Measures by Year

TABLE 15A<sup>75</sup>

EFFICACY MEASURES FOR TARGETED CONSULTATION BY YEAR<sup>76</sup>

	1994	1995	1996	1997	1998	1999
LWDI	7.3	6.7	6.1	5.6	3.2	na
TRI	15.6	12.9	12.8	10.5	7.9	na
TSR	209.9	188.1	143.5	125.0	82.0	na
MRI	6.3	5.4	5.1	4.8	4.7	na
MSI	105.8	117.4	87.9	75.9	104.2	na
CM	12.9	12.7	12.2	12.2	8.3	na
MC	40,886	45,900	38,378	26,678	22,508	na
DC	31,943	34,195	25,890	23,243	27,494	na
Ex	1.26	1.30	1.27	1.21	1.14	1.17

b. Targeted Consultation Program -- Percentage Change in Efficacy Measures by Year

<sup>75</sup> LWDI = Lost Work Day Case Incidence Rate; TRI = Total Injury and Illness Recordable Case Incidence Rate; TSR = Total Injury and Illness Severity Rate (TSI); MRI = Musculoskeletal Injury and Illness Recordable Incidence Rate; MSI = Musculoskeletal Injury and Illness Severity Rate (MSI); CM = Number of Workers' Compensation Claims Made; MC = Medical Costs in Dollars Associated with Claims Paid; DC = Disability Costs in Dollars Associated with Claims Paid; and ExMOD = Experience Modification Rating. "na" = data not available.

<sup>76</sup> Table 15A is based on a sample of 886 employers who received targeted consultative assistance during the program years 1994 through 1999. On average, these 886 employers have been in business for 25.4 years and employ on average 101 employees per year.



TABLE 15B<sup>77</sup>

PERCENTAGE CHANGE IN EFFICACY MEASURES  
FOR TARGETED CONSULTATION 1994 - 1998

EFFICACY MEASURE	PERCENTAGE CHANGE
LWDI	- 56
TRI	- 49
TSR	- 6
MRI	- 25
MSI	- 1
CM	- 35
MC	- 45
DC	- 14
Ex	- 7

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<sup>77</sup> LWDI = Lost Work Day Case Incidence Rate; TRI = Total Injury and Illness Recordable Case Incidence Rate; TSR = Total Injury and Illness Severity Rate (TSI); MRI = Musculoskeletal Injury and Illness Recordable Case Incidence Rate; MSI = Musculoskeletal Injury and Illness Severity Rate (MSI); CM = Number of Workers' Compensation Claims Made; MC = Medical Costs in Dollars Associated with Claims Paid; DC = Disability Costs in Dollars Associated with Claims Paid; and ExMOD = Experience Modification Rating.

c. Targeted Enforcement Program -- Efficacy Measures by Year

TABLE 15C<sup>78</sup>

EFFICACY MEASURES FOR TARGETED INSPECTION BY YEAR<sup>79</sup>

	1995	1996	1997	1998
LWDI	9.5	6.6	4.79	na
TRI	15.7	10.6	9.3	na
TSR	103	80.4	48.59	na
MRI	3.8	1.4	2.78	na
MSI	50.8	47.6	48.56	na
CM	7.8	7.2	4.9	na
MC	29,428	24,542	10,092	na
DC	19,508	8,520	9,474	na
Ex	1.10	1.00	0.92	na

d. Targeted Enforcement Program -- Percentage Change in Efficacy Measures by Year

<sup>78</sup> LWDI = Lost Work Day Case Incidence Rate; TRI = Total Injury and Illness Recordable Case Incidence Rate; TSR = Total Injury and Illness Severity Rate (TSI); MRI = Musculoskeletal Injury and Illness Recordable Case Incidence Rate; MSI = Musculoskeletal Injury and Illness Severity Rate (MSI); CM = Number of Workers' Compensation Claims Made; MC = Medical Costs in Dollars Associated with Claims Paid; DC = Disability Costs in Dollars Associated with Claims Paid; and ExMOD = Experience Modification Rating. na indicates data not available.

<sup>79</sup> Table 15C is based on a sample of employers who received a targeted enforcement inspection during the program years 1995, 1996, 1997 and 1998. These employers were sent a questionnaire in 1998 and 1999 asking for injury and illness data and workers' compensation data. Of the number of questionnaires sent each year, on average only 20% respond. Employers who return the survey have been in business for 23 years on average and employ 78 employees per employer per year. Injury and illness data recorded by employers for 1994 were not included because of the unreliability of their injury and illness recordkeeping practices prior to learning how to record injuries and illnesses properly during a targeted inspection.

TABLE 15D<sup>80</sup>

PERCENTAGE CHANGE IN EFFICACY MEASURES  
FOR TARGETED ENFORCEMENT INSPECTION BY YEAR

	95-96	96-97	98-99	95-98
LWDI	- 30.5	- 27.4	na	- 49.5
TRI	- 32.4	- 12.2	na	- 40.7
TSR	- 21.9	- 39.5	na	- 52.8
MRI	- 63.0	+ 98.5	na	- 26.8
MSI	- 6.2	+ 2.0	na	- 4.4
CM	- 7.7	- 31.9	na	- 37.1
MC	- 16.6	- 58.8	na	- 65.7
DC	- 56.3	+ 11.2	na	- 51.4
ExMOD	- 9.0	- 8.0	na	na

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<sup>80</sup> LWDI = Lost Work Day Case Incidence Rate; TRI = Total Injury and Illness Recordable Case Incidence Rate; TSR = Total Injury and Illness Severity Rate (TSI); MRI = Musculoskeletal Injury and Illness Recordable Case Incidence Rate; MSI = Musculoskeletal Injury and Illness Severity Rate (MSI); CM = Number of Workers' Compensation Claims Made; MC = Medical Costs in Dollars Associated with Claims Paid; DC = Disability Costs in Dollars Associated with Claims Paid; and ExMOD = Experience Modification Rating. na indicates data not applicable.

e. 1994-1999 Cumulative Efficacy Analysis

(1) Improvements in Injury and Illness Rates and Workers' Compensation Loss Indicators for Targeted Employers

Tables 15A and 15B demonstrate that employers who received targeted consultation assistance saw their establishments' workplace injury and illness incidence rates improve.<sup>81</sup> In addition, their workers' compensation loss indicators generally improved over the same period of time.<sup>82</sup>

Even though employers who received a targeted inspection did not "volunteer" for such an inspection and therefore may not have been motivated to change workplace safety culture, Tables 15C and 15D indicate that such employers also saw their establishments' workplace injury and illness incidence rates and workers' compensation loss indicators improve.

These reductions in injury and illness rates and loss indicators have resulted in significant savings in injury costs and premium costs.

(2) Interpretation of Improvements in Injury and Illness Rates and Workers' Compensation Loss Indicators

The improvements in an employer's injury and illness incidence rates and their workers' compensation loss indicators, which are noted in Tables 15A, B, C and D, are significant.

(a) Injury and Illness Rates

The general downward trend in all five employee injury and illness incidence rate efficacy measures is significant because these percentage reductions reflect actual changes made in engineering controls, administrative controls or work practices which prevented the occurrence of a workplace injury or illness and the resultant costs associated with such events.

i. Lost Workday Case Incidence Rate

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<sup>81</sup> The five workplace injury and illnesses incidence rates include: (1) the lost workday case incidence rate; (2) total injury and illness recordable case incidence rate; (3) total injury and illness severity rate; (4) musculoskeletal injury and illness recordable case incidence rate; and (5) musculoskeletal injury and illness severity rate.

<sup>82</sup> The four workers' compensation loss indicators include: (1) the number of workers' compensation claims made; (2) the medical costs in dollars associated with claims made; (3) the disability costs in dollars associated with claims made; and (4) the experience modification rating.

Table 15B demonstrates a 56% decrease in the lost workday case incidence rate (LWDI) for targeted consultation employers, and Table 15D shows a 49.5% decrease in the LWDI for targeted inspection employers from 1994 to 1998.

During the same period of time, the average percentage decrease in the LWDI for all California employers was only 12.1%.<sup>83</sup> Thus, targeted consultation employers experienced a greater reduction in the LWDI than did other California employers and targeted inspection employers experienced a significantly greater reduction in the LWDI than other California employers.

ii. Total Injury and Illness Recordable Case Rate

Table 15B demonstrates a 49% decrease in the Total Injury and Illness Recordable Case Incidence Rate (TRI) for targeted consultation employers (in 1994-1999) and Table 15D shows a 40.7% decrease in TRI for targeted inspection employers (in 1995-1997).

During the same period of time, the average percentage decrease in the TRI for all California employers was only 10%.<sup>84</sup>

Thus, targeted consultation and inspection employers experienced a greater reduction in the TRI than did other California employers.

iii. Total Injury and Illness Severity Rate

Table 15B demonstrates a 6% decrease in the Total Injury and Illness Severity Rate (TSR) for targeted consultation employers (in 1994-1999), and Table 15D shows a 52.8% decrease in the TSR for targeted inspection employers (in 1995-1997).

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<sup>83</sup> The lost work day case incidence rate (LWDI) for all industries (including State and local government) was 4.1 in 1994, 3.8 in 1995, 3.5 in 1996, 3.6 in 1997 and 3.3 in 1998.

<sup>84</sup> The total injury and illness recordable case incidence rate (TRI) for all industries (including State and local government) was 7.9 in 1995, 7.1 in 1996 through 1998.

Even though the TSR is not compiled on a statewide basis, the percentage reductions in the TSR for employers in the targeted consultation and inspection programs is nonetheless significant as a measure of the efficacy of the targeted interventions from year to year among targeted employers.

iv. Musculoskeletal Injury and Illness Recordable Incidence Rate

Table 15B demonstrates a 25% decrease in the Musculoskeletal Injury and Illness Recordable Case Rate (MRI) for targeted consultation employers (in 1994-1999), and Table 15D shows a 26.8% decrease in the MRI for targeted inspection employers (in 1995-1997).

Even though the MRI is not compiled on a statewide basis, the percentage reductions in the MRI for employers in the targeted consultation and inspection programs is nonetheless significant as a measure of the efficacy of the targeted interventions from year to year among targeted employers. Reductions in musculoskeletal injuries and illnesses are especially significant in that these types of injury and illness claims represent the greatest proportion of workers' compensation insurance claims of high severity (most costly). Any reduction in their occurrence can have a significant positive effect on an employer's compensation loss indicators, e.g., number of claims-made and medical and disability costs per claim paid.

v. Musculoskeletal Injury and Illness Severity Rate

Table 15B demonstrates a 1% decrease in the Musculoskeletal Injury and Illness Severity Rate (MSI) for targeted consultation employers (in 1994-1999), and Table 15D shows a 4.4% decrease in the MSI for targeted inspection employers (in 1995-1997).

Even though the MSI is not compiled on a statewide basis, the percentage reductions in the MSI for

employers in the targeted consultation and inspection programs is nonetheless significant as a measure of the efficacy of the targeted interventions from year to year among targeted employers.

Reductions in musculoskeletal injuries and illnesses are especially significant in that these types of injury and illness claims represent the greatest proportion of workers' compensation insurance claims of high severity (most costly). Any reduction in their occurrence can have a large positive effect on an employer's compensation loss indicators, e.g., number of claims made and medical and disability costs per claim paid.

(b) Loss Indicators

i. Claims Made

Table 15B demonstrates a 35% decrease in claims made for targeted consultation employers from the years 1994 to 1997.

For the years 1994 through 1996, for which statewide claims-made data is available,<sup>85</sup> employers with ExMODs of 1.25 or greater experienced a 1.2% reduction in claims- made compared to an 35% reduction from the years 1994 to 1997 in claims made for targeted consultation employers and a 37.1% decrease in claims-made for targeted inspection employers (in 1995-1997). See Table 15B.

ii. Medical Costs In Dollars Associated with Claims Paid

Table 15B demonstrates a 45% decrease in medical costs in dollars associated with claims-paid for targeted consultation employers (1994-98), and a 65.7% decrease for targeted inspection employers (1995 to 1997). No statewide data is available for comparison. However, for the years 1994 to 1996,

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<sup>85</sup> Statewide data for number of workers' compensation insurance claims made is provided courtesy of the Workers' Compensation Insurance Rating Bureau. Data for claims made in 1997 and 1998 is not available.

California employers with ExMODs of 1.25 or greater experienced only a 2.5% reduction in medical costs in dollars associated with claims-paid.<sup>86</sup>

iii. Disability (Indemnity) Costs in Dollars Associated with Claims Paid

Table 15B demonstrates a 14% decrease in the disability costs in dollars associated with claims-paid for targeted consultation employers for the years 1994 to 1998.

For the years 1994 through 1996, for which statewide disability cost data is available, employers with ExMODs of 1.25 or greater experienced a 4.6% increase in disability (indemnity) costs compared to an 14% reduction in indemnity costs from 1994 to 1999 for targeted consultation employers.<sup>87</sup> See Table 15B.

For the years 1995 to 1997, Table 15D demonstrates a 51.4% decrease in the disability costs in dollars associated with claims-paid for targeted inspection employers.

Due to the unavailability of statewide claims-made data for the year 1997, a similar comparison cannot be made for targeted inspection employers. However, when 1997 and 1998 data is made available, the 14% and the 51.4% reduction in disability costs for targeted employers is expected to be greater than that for other California employers.

The reductions in disability costs, if computed for the entire subset of approximately TICF-assessed employers with ExMODs of 1.25 or greater, amount to significant cost savings for employers.

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<sup>86</sup> Statewide data for medical costs made is provided courtesy of the Workers' Compensation Insurance Rating Bureau. Data for medical costs in 1997 and 1998 is not available.

<sup>87</sup> Statewide data for disability (indemnity) costs is provided courtesy of the Workers' Compensation Insurance Rating Bureau. Data for disability costs in 1997 and 1998 is not yet available.



iv. ExMOD

Tables 15B and 15D demonstrate that employers receiving targeted consultative assistance experienced a 7% reduction (for the years 1994 to 1998) in their ExMOD and employers receiving targeted inspection experienced a 8% reduction (for the years 1995 to 1997) in their ExMOD. In comparison, California employers in general experienced a 4.4% increase in their ExMOD in the years 1994 to 1996.<sup>88</sup>

It is notable that targeted employers experienced a significant reduction in their ExMODs. Such reductions have a positive cost-benefit effect in that the ExMOD is used by insurers to price an employer's workers' compensation insurance coverage.

(3) Summary

The findings of the 1997, 1998, 1999 and 2000 Reports are similar and show that the targeting of establishments for consultative assistance which have elevated rates of workplace injuries and illnesses, and the application of consultation resources to those targeted establishments is an effective way to reduce those injury and illness incidence rates and workers' compensation loss indicators.

In reviewing efficacy measures--five workplace injury and illness incidence rates and four workers' compensation loss indicator measures--from a sample of almost one thousand targeted consultation employers, the 2000 Report indicate that the Targeted Consultation and Enforcement Programs have a continuing role to play in the Cal/OSHA Program in eliminating workplace hazards, reducing injuries and illnesses and workers' compensation losses in California workplaces.

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<sup>88</sup> Data for 1997 and 1998 is not available.

## ATTACHMENT A

### INSURANCE CODE SECTION 11721

#### Section 11721 Loss control consultation services

(a) Any insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations. The director may fix and collect fees to recover the costs for certifying the loss control consultation services and receiving and reviewing the annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. All fees shall be deposited in the Cal-OSHA Targeted Inspection and Consultation Fund as defined in Section 62.7 of the Labor Code. The insurer may employ qualified personnel to provide these services or provide the services through another entity that has been certified by the director.

(b) The program of an insurer for furnishing loss control consultation services shall be adequate to meet minimum standards prescribed by the director. The services shall include the conduct of workplace surveys to identify health and safety problems, review of employer injury records, including injury and prevention programs required pursuant to Section 6401.7 of the Labor Code. At the time that an insurance policy is issued and annually thereafter, the insurer shall provide each insured employer with a written description of the consultation services together with a notice that the services are available at no additional charge to the employer.

(c) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultation services.

(d) Each insurer shall submit to the director, in a form prescribed by the director, an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. The plan shall include a budget and identify the insurer's methodology for selecting the employers and the number, type, and size of employers who will be targeted. The plan shall be accompanied by a description of the insurer's safety and health loss control activities for the prior year, including, but not limited to, costs, the number, type, and size of businesses served, and any additional information required by the director. The information provided to the director under this subdivision shall remain confidential except for aggregate statistical data. The director shall develop guidelines to assist insurers to identify the employers with the highest preventable health and safety hazards.

(e) Noting in this section shall be construed to require insurers to provide loss control services to places of employment that do not pose significant preventable hazards to workers.

Amended in 1995 to read as follows:

#### Section 11721 Loss control consultation services

An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code.

## ATTACHMENT B

### LABOR CODE SECTION 62.7

#### Section 62.7 Cal-OSHA Targeted Inspection and Consultation Fund

- (a) The Cal-OSHA Targeted Inspection and Consultation Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Cal-OSHA targeted inspection program provided by Section 6314.1 and the costs of the Cal-OSHA targeted consultation program provided by subdivision (a) of Section 6354, and certifying loss control consultation services of workers' compensation insurers pursuant to Section 11745 of the Insurance Code.
- (b) The fund shall consist of any money appropriated for these purposes, assessments made pursuant to this section, and fees collected pursuant to Section 11721 of the Insurance Code.
- (c) Assessments shall be levied by the director only on all insured employers with a workers' compensation insurance experience rating modification of 1.25 or more and private self-insured employers with an equivalent experience rating of 1.25 or more. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment and to determine the equivalent experience rating of 1.25 or more for self-insured employers. The rules shall require the assessment to be paid by employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commissions. This assessment shall not be continued after the employer's experience modification rating or equivalent modification drops below 1.25.
- (d) Amounts assessed pursuant to this section shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program in 1993-94 adjusted for inflation.

(1993 ch. 121 urgency eff. July 16, 1993, 1993 ch. 1241, 1993 ch 1242)

Amended in 1995 to read as follows:

- (a) The Cal-OSHA Targeted Inspection and Consultation Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Cal-OSHA targeted inspection program provided by Section 6314.1 and the costs of the Cal-OSHA targeted consultation program provided by subdivision (a) of Section 6354, and for costs related to assessments levied and collected pursuant to Section 62.9.
- (b) The fund shall consist of the assessments made pursuant to Section 62.9 and other moneys transferred to the fund.

(1993 ch. 121 urgency eff. July 16, 1993, 1993 ch. 1241, 1993 ch 1242, 1995, ch. 33 urgency eff. June 30, 1995, 1995 ch. 556)

## ATTACHMENT C

### LABOR CODE SECTION 6314.1

#### Section 6314.1 Identification of Highest Hazard Industries in State--Targeted Inspection Program

(a) The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations as defined in Section 11750.1 of the Insurance Code; histories of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates.

(b) The division shall establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis. The division may send a letter to the high hazard employers who are identified pursuant to this section informing them of their status and directing them to submit a plan, including the establishment of joint labor-management health and safety committees, within a time determined by the division for reducing their occupational injury and illness rates. Employers who submit plans that meet the requirements of the division may be placed on a secondary inspection schedule. Employers on that schedule shall be inspected on a random basis as determined by the division. Employers who do not submit plans meeting the requirements of the division within the time specified by the division shall be placed on the primary inspection list. Every employer on the primary inspection list shall be subject to an inspection. The division shall employ sufficient personnel to meet minimum federal targeted inspection standards.

(c) The division shall establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to the inspections required or authorized in Sections 6309, 6313, and 6320. Each regional plan shall focus on industries selected from the targeted inspection program as well as any other scheduled inspections that the division determines to be appropriate to the region, including the cleanup of hazardous waste sites. All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.

(d) In order to maximize the impact of the regional plans, the division shall coordinate its education, training, and consulting services with the priorities established in the regional plans.

(1993 ch. 121 urgency eff. July 16, 1993)

## ATTACHMENT D

### LABOR CODE SECTION 6354

#### Section 6354 Occupational Safety and Health Programs and Services

The division shall, upon request, provide a full range of occupational and health consulting services to any employer or employee group. These consulting services shall include:

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

The program shall include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries. The division may formulate recommendations for reducing repetitive motion injuries after conducting a survey of the workplace of the employer who accepts services of the division. The recommendations shall include, whenever appropriate, the application of generally accepted ergonomic and engineering principles to eliminate repetitive motion injuries to workers. The recommendations shall also include, whenever appropriate, training programs to instruct workers in methods for performing job-related movements, such as lifting heavy objects, in a manner that minimizes strain and provides safeguards against injury. The division shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualifications of instructors. The model program shall be made available to employers, employer associations, workers' compensation insurers, and employee organizations on request.

(b) A program for providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the regional plans developed pursuant to subdivision (b) of Section 6314.1

(c) A program for providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices, or programs.

(1973 ch. 993 urgency eff. Oct. 1, 1973, 1989 ch. 1369 urgency eff. Oct. 2, 1989, 1993 ch. 121 urgency eff. July 16, 1993, 1995 ch. 903)

## ATTACHMENT E

### LABOR CODE SECTION 6355

#### Section 6355 Occupational Safety and Health Programs and Services

If the employer requests or accepts consulting services offered pursuant to Section 6354, the division in providing such services at the employer's employment or place of employment shall neither institute any prosecution under Section 6423 nor issue any citations for a violation of any standard or order adopted pursuant to Chapter 6 (commencing with Section 140) of Division 1. In any instance in which the division representative providing the consulting service finds that the conditions of employment, place of employment, any procedure, or the operation of any machine, device, apparatus, or equipment constitutes an imminent hazard or danger, within the meaning of Section 6325, to the lives, safety, or health of employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division pursuant to Section 6325. The employer shall not, however, be liable to prosecution under Section 6423, nor shall the division issue any citations or assess any civil penalties, except in any case where the employer fails to comply with the division's prohibition of entry or use, or in any case where the provisions of Section 6326 apply.

(1973 ch. 993 urgency eff. Oct. 1, 1973, 1977 ch. 460, 1993 ch. 121 urgency eff. July 16, 1993)

## ATTACHMENT F

### LABOR CODE SECTIONS 6357 AND 6719

#### Section 6357 Adoption of Standards for Ergonomics in the Workplace

On or before January 1, 1995, the Occupational Safety and Health Standards Board shall adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

(1993 ch. 121 urgency eff. July 16, 1993)

#### Section 6719 Reaffirmation of Legislative Concern Over Repetitive Motion Workplace Injuries

The Legislature reaffirms its concern over the prevalence of repetitive motion injuries in the workplace and reaffirms the Occupational Safety and Health Standards Board's continuing duty to carry out Section 6357.

(1999 ch. 615)

## ATTACHMENT G

### 8 CCR Section 5110<sup>89</sup>

#### Group 15. Occupational Noise and Ergonomics, Article 106. Ergonomics, Section 5110. Ergonomics

- (a) Scope and application. This section shall apply to a job, process, operation where a repetitive motion injury (RMI) has occurred to more than one employee under the following conditions:
- (1) Work related causation. The repetitive motion injuries (RMIs) were predominantly caused (i.e. 50% or more) by a repetitive job, process, or operation;
  - (2) Relationship between RMIs at the workplace. The employees incurring the RMIs were performing a job process, or operation of identical work activity. Identical work activity means that the employees were performing the same repetitive motion task, such as but not limited to word processing, assembly or, loading;
  - (3) Medical requirements. The RMIs were musculoskeletal injuries that a licensed physician objectively identified and diagnosed; and
  - (4) Time requirements. The RMIs were reported by the employees to the employer in the last 12 months but not before July 3, 1997.
- ~~Exemption: Employers with 9 or fewer employees.~~
- (b) Program designed to minimize RMIs. Every employer subject to this section shall establish and implement a program designed to minimize RMIs. The program shall include a worksite evaluation, control of exposures which have caused RMIs and training of employees.
- (1) Worksite evaluation. Each job, process, or operation of identical work activity covered by this section or a representative number of such jobs, processes, or operations of identical work activities shall be evaluated for exposures which have caused RMIs.
  - (2) Control of exposures which have caused RMIs. Any exposures that have caused RMIs shall, in a timely manner, be corrected or if not capable of being corrected have the exposures minimized to the extent feasible. The employer shall consider engineering controls, such as work station redesign, adjustable fixtures or tool redesign, and administrative controls, such as job rotation, work pacing or work breaks.
  - (3) Training. Employees shall be provided training that includes an explanation of:
    - (A) The employer's program;
    - (B) The exposures which have been associated with RMIs;
    - (C) The symptoms and consequences of injuries caused by repetitive motion;
    - (D) The importance of reporting symptoms and injuries to the employer; and
    - (E) Methods used by the employer to minimize RMIs.
- (c) Satisfaction of an employer's obligation. Measures implemented by an employer under subsection (b)(1), (b)(2), or (b)(3) shall satisfy the employer's obligations under that respective subsection, unless it is shown that a measure known to but not taken by the employer is substantially certain to cause a greater reduction in such injuries and that this alternative measure would not impose additional unreasonable costs.

Note: Authority cited: Sections 142.3 and 6357. Labor Code. Reference: Sections 142.3 and 6357.



## ATTACHMENT H

### LABOR CODE SECTION 6354.5

#### Section 6354.5 Workers' Compensation Insurer to Provide Loss Control Consultation Services; Contents; Submission of Annual Plan

- (a) Any insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations. The director may fix and collect fees to recover the costs for certifying the loss control consultation services and receiving and reviewing the annual health and safety loss control plan for identifying employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. All fees shall be deposited in the Loss Control Certification Fund, which is hereby created as a special fund in the State Treasury. The moneys in the fund may be expended, upon appropriation by the Legislature, for the purpose of certifying loss control consultation services pursuant to this section. The insurer may employ qualified personnel to provide these services or provide the services through another entity that has been certified by the director as part of the insurer's annual plan.
- (b) The program of an insurer for furnishing loss control consultation services shall be adequate to meet minimum standards prescribed by the director. The services shall include the conduct of workplace surveys to identify health and safety problems, review of employer injury records with appropriate personnel, and development of plans to improve employer health and safety loss records, including injury and prevention programs required pursuant to Section 6401.7. At the time that an insurance policy is issued and annually thereafter, the insurer shall provide each insured employer with a written description of the consultation services together with a notice that the services are available at no additional charge to the employer.
- (c) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultation services.
- (d) Each insurer shall submit to the director, in a form prescribed by the director, an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. The plan shall include a budget and describe the insurer's methodology for selecting the employers and the number, type, and size of employers who have the greatest workers' compensation losses and the most significant and preventable health and safety hazards, but nothing in this section shall be construed to require the insurer to identify any employer by name. The plan shall be accompanied by a description of the insurer's safety and health loss control activities for the prior year, including, but not limited to, costs, the number, type, and size of businesses served, and any additional information required by the director. The information provided to the director under this subdivision shall remain confidential except for aggregate statistical data. The confidentiality of information provided to the director under this subdivision shall extend to prohibit the disclosure or release of any information provided to the director under this section to any unit of bureau within the division. The director shall develop guidelines to assist insurers to identify the employers with the highest preventable health and safety hazards.
- (e) Nothing in this section shall be construed to require insurers to provide loss control services to places of employment that do not pose significant preventable hazards to workers.
- (f) An exemption, extension or exception to the annual filing requirements specified in subdivision (b) may be granted by the director upon a showing by the insurer that one of the following applies:

## LABOR CODE SECTION 6354.5, continued

- (1) That no new filing is required because there are no material changes to the plan currently on file with the director.
- (2) That the filing is limited to material changes to the plan on file with the director.
- (3) That the information necessary for the filing is not yet in the possession of the insurer and that an extension of time for the filing is necessary to enable the insurer to make a full and complete filing.
- (4) That the insurer has no policy holders in California who meet the appropriate criteria for identification pursuant to the plan currently on file with the director.

(1995 ch. 556)

## ATTACHMENT I

### LABOR CODE SECTION 62.9

As enacted in 1995:

#### Section 62.9. Assessments for Inspection and Consultation Fund

(a) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes, other than pursuant to the initial assessment described in subdivision (e), shall not exceed 50% of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993-94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collection process, the cost of credits and reimbursements paid pursuant to subdivision (e), and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c). The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars (\$250,000) shall be assessed one hundred dollars (\$100).

(B) An employer with a payroll of two hundred fifty thousand dollars (\$250,000) or more, but not more than five hundred thousand dollars (\$500,000) shall be assessed two hundred dollars (\$200).

(C) An employer with a payroll of more than five hundred thousand dollars (\$500,000), but not more than seven hundred fifty thousand dollars (\$750,000) shall be assessed four hundred dollars (\$400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars (\$750,000), but not more than one million dollars (\$1,000,000) shall be assessed six hundred dollars (\$600).

(E) An employer with a payroll of more than one million dollars (\$1,000,000), but not more than one million five hundred thousand dollars (\$1,500,000) shall be assessed eight hundred dollars (\$800).

(F) An employer with a payroll of more than one million five hundred thousand dollars (\$1,500,000), but not more than two million dollars (\$2,000,000) shall be assessed one thousand dollars (\$1000).

(G) An employer with a payroll of more than two million dollars (\$2,000,000), but not more than two million five hundred thousand dollars (\$2,500,000) shall be assessed one thousand dollars, five hundred (\$1500).

(H) An employer with a payroll of more than two million five hundred thousand dollars (\$2,500,000), but not more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand dollars (\$2000).

(I) An employer with a payroll of more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand five hundred dollars (\$2500).

## LABOR CODE SECTION 62.9, continued

(b)(1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (f).

(2) The assessment required by this section shall be levied annually, on a calendar basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before July 16, 1995, for the purposes of the July 1995 assessment, and thereafter not later than March 1 of each year, the director shall provide each insurer with a statement identifying each of its current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The insurer immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision. Each insurer shall report to the director the date on which the notice required by this paragraph was mailed.

(4) In the event an insured employer notifies the insurer that there is a disagreement as to the payment obligation described in paragraph (3), the insurer shall refer the employer to the department and notify the director that the employer has made an objection.

(5) The director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail. Each insurer shall report to the director the date on which the notices required by this paragraph were mailed.

(6) If an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

## LABOR CODE SECTION 62.9, continued

(e)(1) An initial assessment shall be collected in July of 1995, in accordance with subdivision (f) and the provisions of this section governing assessments, except that the initial assessment shall be in an amount sufficient to fund the cost of the program described in Section 62.7 from their inception on July 16, 1993 to December 31, 1995, inclusive, and to fund credits and reimbursements approved by the director under paragraphs (2) and (3).

(2) The director shall credit, against the amount assessed against any private sector self-insured employer under this section, any amount that was paid by that self-insured employer pursuant to Section 62.7 prior to the effective date of this section. The director shall reimburse any private sector self-insured employer who is not subject to the initial assessment described in paragraph (1) in the amount, if any, that was paid by the self-insured employer pursuant to Section 62.7 prior to the effective date of this section.

(3) The director shall reimburse any insurer in the amount of any advance paid by the insurer under regulations that were promulgated prior to the effective date of this section to implement Section 62.7, and the insurer, in turn, shall reimburse those insured employers from whom the advance was collected.

(f) The identification of private sector self-insured employers to be subject to the initial assessment described in subdivision (c) shall be made pursuant to the regulations that were promulgated prior to the effective date of this section to implement Section 62.7. Subsequent to that initial assessment, the director shall rescind those regulations, and shall promulgate regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(g) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and, subject to subdivision (h), shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

(h) The repayment of the loan that was made to the Cal-OSHA Targeted Inspection and Consultation Fund for the purposes of Section 62.7, and of interest on the loan, is hereby deferred until the director determines that sufficient funds in excess of the requirements of the programs specified by Section 62.7 are available in the fund to make that repayment, except that in no event shall this deferment extend beyond January 1, 1996.

(i)(1) No later than January 1, 1998, the department shall submit to the Joint Legislative Budget Committee a report containing the following information concerning the Cal-OSHA targeted inspection and consultation programs described in Section 62.7:

(A) The number and type of targeted employers inspected.

(B) The number and type of follow-up inspections conducted.

(C) The number and type of violations observed and corrected.

(D) The number and type of enforcement actions taken.

(E) The total number of program staff hours expended in enforcement, administration, and support for the programs.

(F) An overall assessment of the efficacy of the programs, supported by workplace injury and illness data.

(2) No later than January 1, 1997, the department shall submit to the Joint Legislative Budget Committee an interim report concerning the information required under paragraph (1), including a preliminary assessment of the efficacy of the programs.

(k)(1) No later than January 1, 1998, the department shall submit to the Legislature a report addressing one or more alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7. The report also shall propose and evaluate

## LABOR CODE SECTION 62.9, continued

one or more alternatives to the use of workers' compensation insurance experience modification ratings for the identification of employers subject to assessment, and alternative methods for determining assessment amounts and collecting the assessments.

(2) No later than January 1, 1997, the department shall submit to the Legislature an interim report concerning its progress with regard to the report described in paragraph (1), including any tentative findings made by the department concerning alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7.

(? ) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

(1995 ch. 33 urgency eff. June 30, 1995)

As amended in 1998 and 1999 to read as follows:

### Section 62.9. Assessments for Inspection and Consultation Fund

(a)(1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50% of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993-94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collection process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars (\$250,000) shall be assessed one hundred dollars (\$100).

(B) An employer with a payroll of two hundred fifty thousand dollars (\$250,000) or more, but not more than five hundred thousand dollars (\$500,000) shall be assessed two hundred dollars (\$200).

(C) An employer with a payroll of more than five hundred thousand dollars (\$500,000), but not more than seven hundred fifty thousand dollars (\$750,000) shall be assessed four hundred dollars (\$400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars (\$750,000), but not more than one million dollars (\$1,000,000) shall be assessed six hundred dollars (\$600).

(E) An employer with a payroll of more than one million dollars (\$1,000,000), but not more than one million five hundred thousand dollars (\$1,500,000) shall be assessed eight hundred dollars (\$800).

(F) An employer with a payroll of more than one million five hundred thousand dollars (\$1,500,000), but not more than two million dollars (\$2,000,000) shall be assessed one thousand dollars (\$1000).

(G) An employer with a payroll of more than two million dollars (\$2,000,000), but not more

## LABOR CODE SECTION 62.9, continued

than two million five hundred thousand dollars (\$2,500,000) shall be assessed one thousand dollars, five hundred (\$1500).

(H) An employer with a payroll of more than two million five hundred thousand dollars (\$2,500,000), but not more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand dollars (\$2000).

(I) An employer with a payroll of more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand five hundred dollars (\$2500).

(b)(1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to the assessment, and the amount of the total assessment for which each insured employer is liable. The director shall immediately notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

## LABOR CODE SECTION 62.9, continued

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighed by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

(1995 ch. 33 urgency eff. June 30, 1995, 1998 ch. 814 oper. Jan. 1, 2000, 1999 ch. 469)



## ATTACHMENT J

### TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15600 et seq.

#### Section 15601.6 Determination of Targeted Inspection Assessment

~~(a) On or before September 1 of each year, the Director shall determine the aggregate amount of the Targeted Inspection Assessment to be collected.~~

~~(b) On or before September 1 of each year, the Director shall determine those self-insured employers subject to the Targeted Inspection Assessment as set forth in Section 15601.7 of these regulations.~~

~~(c) The aggregate amount of this assessment shall be allocated between insured and self-insured employers by applying the proportional allocation methodology set forth in section 15602 of these regulations to the payroll data reported to the Director for those self-insured employers identified as subject to the Targeted Inspection and Consultation Assessment, pursuant to Section 15601.7 of these regulations, and the equivalent payroll data reported for insured employers pursuant to Section 15601.8 of these regulations.~~

Note: Authority cited: Sections 54, 55, 62.5, 62.6 and 62.7, Labor Code. Reference: Section 62.7, Labor Code. Repealed: 1996

#### Section 15601.7 Determination of Targeted Inspection Assessment

On or before September 1 of each year, the Manager of the Self-Insured Plans shall identify for the Director each Private Self Insurer subject to the Targeted Inspection Assessment as determined below.

(a) The Targeted Inspection Assessment shall apply to each Self Insurer in each grouping set forth in subsection (b) that has a current 1-year average cost per claim, as calculated in subsection (e) below, that is equal to or in excess of the 1.25 figure determined for each grouping in subsection (d) of this section.

(b) The Manager shall categorize all private self insurers into groups for the purpose of calculating the Cal/OSHA assessment. All private self insurers shall be categorized into groups by the first digit of their Standard Industrial Classification Code (SIC Code) as reported on Page 1 of the Self Insurers Annual Report for the reporting period immediately prior to the current budget year. For purposes of such categorization, each private group self insurer shall be considered as a single entity.

(c) For each grouping set forth in subsection (a), the Manager shall calculate from the Self Insurer's Annual Reports submitted by the members in each group for the reporting period immediately prior to the current budget year the following:

- (1) A 3-year total incurred liability reported for all claims for each grouping during claim years 3, 4 and 5 from the Consolidated Liabilities Page of the affected annual reports;
- (2) A 3-year total number of claims reported for each grouping during claim years 3, 4, and 5 from the Consolidated Liabilities Page of the affected annual reports;
- (3) The 3-year average cost per claim for each grouping during claim years 3, 4, and 5 determined by dividing the figure calculated in Subsection (b)(1) by the figure calculated in Subsection (b)(2). This figure shall be the grouping's 3-year historical base average cost per claim.

(d) The Manager shall calculate a figure that will be 1.25 of each grouping's 3 year history average base costs per claim.

(e) For each private self insurer, the Manager shall calculate a current 1-year average costs per claim by dividing the total incurred liability, for year 2 by the total number of claims reported for year 2 as reported in the Self Insurer's Annual reports submitted for the reporting period immediately prior to the current budget year.

Note: Authority cited: Sections 54, 55 and 62.7 Labor Code. Reference: Section 62.7 Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day. 2. Certificate of Compliance as to 9-6-94 order including amendment of first paragraph and subsection (a), (d), and (e), repealer of subsections (b)-(b)(3), and new subsection (b) transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7). Amended section went into effect 10 November 1997. See Attachment K.

## Section 15603.5      Determination of Targeted Inspection and Consultation Assessment Factors

~~(a) The insured employer Targeted Inspection and Consultation Assessment factor shall be determined by dividing the total amount of the insured employer assessment by the total direct written workers' compensation premium as reported to the Director pursuant to Section 15601.8 of these regulations.~~

~~(b) The self-insured employer Targeted Inspections and Consultation Assessment factor shall be determined by dividing the total self-insured Targeted Inspection Assessment by the total amount of workers' compensation indemnity paid under California law by those self-insured employers identified as subject to the assessment during the base year, as determined by the Office of Self Insurance Plans pursuant to Section 15601.7 of these regulations.~~

Note: Authority cited: Sections 54, 55 and 62.7, Labor Code. Reference: Section 62.7, Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-6-94 order including amendment of section and Note transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7). Repealed 1996.

## Section 15605.5      Collection of Targeted Inspection Assessment From Self-Insured Employers

~~The Targeted Inspection Assessment shall be collected by the Manager from those self-insured employers identified as subject to the Targeted Inspection Assessment in the same manner prescribed by section 15605 of these regulations, except that the determination of the Targeted Inspection Assessment due from each employer identified as subject to the Targeted Inspection Assessment shall be determined by multiplying the self-insured Targeted Inspection Assessment factor by the total amount of workers' compensation indemnity paid and reported on each Self-Insured Employer's Annual Report during the base year for the Targeted Inspection Assessment.~~

Note: Authority cited: Sections 54, 55 and 62.7, Labor Code. Reference: Section 62.7, Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-6-94 order including amendment of section and Note transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7).

Repealed in 1996.

## Section 15607.5      Collection of Targeted Inspection Assessment From Insured Employers

~~(a) Together with the collection of the Workers' Compensation Administration Revolving Fund Assessment and the State Fraud Investigation and Prosecution Surcharge, every insurer shall additionally collect the Targeted Inspection Assessment required by this Article and Labor Code Section 62.7.~~

~~(b) The assessment shall be collected by applying the Targeted Inspection Assessment Factor to the direct written premium in effect for those policies with an inception date on or after January 1 of the year of the assessment with a workers' compensation experience modification of 1.25 or greater. The assessment factors in effect on the inception date of the policy shall be used to calculate the separate charges relative to that policy, including any additional or return premium.~~

~~(c) The amount of the Targeted Inspection shall be rounded to the nearest whole dollar, and shown in the policy as "Cal/OSHA Targeted Inspection Assessment (amount)".~~

~~(d) The experience rating modification in effect at the inception of the policy shall be conclusively presumed to be final for purposes of the assessment. No change in, or challenge to, an employer's experience rating modification during the policy period for the policy subject to assessment shall affect the insurer's liability for that policy year's assessment, or the amount thereof. However, if an employer demonstrates to the Division that the Department of Insurance's designated licensed rating organization has determined that the employer should not have been subject to an experience modification of 1.25 or greater, the Division shall refund that policy year's assessment to the employer.~~

~~(e) The insurer shall include on the annual report required by section 15606 of these regulations, the data set forth in subsection (c) of section 15606 for the Targeted Inspection Assessment to the same fashion as is required for the Workers' Compensation Administration Revolving Fund Assessment and the State Fraud Investigation and Prosecution Surcharge.~~

~~(f) The insured employer's separate charges calculated under subsection (a) above shall be collected in full with the initial payment of standard premium. If additional premium becomes due under the policy, the final amount of the separate charges shall be adjusted with the final premium bill for the policy.~~

Repealed 1996.

## ATTACHMENT K

### TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15600 et seq.

#### Section 15601.7      Determination of Self-Insured Employers Subject to the Targeted Inspection Assessment

On or before September 1 of each year, the Manager of the Self-Insured Plans shall identify for the Director each Private Self Insurer subject to the Targeted Inspection Assessment as determined below.

(a) The Targeted Inspection Assessment shall apply to each Self Insurer in each grouping set forth in subsection (b) that has a current 1-year average ~~cost per claim~~ number of indemnity claims per 100 employees, as calculated in subsection (e) below that is equal to or in excess of ~~the 125~~ 125 percent of the 3 year base figure determined for each grouping in subsection (d) of this section.

(b) The Manager shall categorize all private self insurers into groups for the purpose of calculating the Cal/OSHA assessment. All private self insurers shall be categorized into groups by the first digit of their Standard Industrial Classification Code (SIC Code) as reported on Page 1 of the Self Insurers Annual Report for the reporting period immediately prior to the current budget year. For purposes of such categorization, each private group self insurer shall be considered as a single entity. The Manager may correct the SIC Code reported for cause or where the Manager believes an error was made by the self insurer in designating their SIC Code on the Annual Report.

(c) For each SIC Code grouping set forth in subsection (a), the Manager shall calculate the average historical number of indemnity claims per 100 employees from the Consolidated Liabilities page of the full year Self Insurer's Annual Reports submitted by the members in each SIC Code group for the 3 year reporting period immediately prior to the current 1-year period used to calculate the individual self insurer's indemnity claims per 100 employees.~~budget year the following:~~

(1) A 3-year total incurred liability reported for all claims for each grouping during claim years 3, 4 and 5 from the Consolidated Liabilities Page of the affected annual reports;

(2) A 3-year total number of claims reported for each grouping during claim years 3, 4, and 5 from the Consolidated Liabilities Page of the affected annual reports;

(3) The 3-year average cost per claim for each grouping during claim years 3, 4, and 5 determined by dividing the figure calculated in Subsection (b)(1) by the figure calculated in Subsection (b)(2). This figure shall be the grouping's 3-year historical base average cost per claim.

(d) The Manager shall calculate a figure that will be ~~1.25~~ 125 percent of each SIC Code grouping's 3 year historical average ~~base cost per claim.~~ number of indemnity claims per 100 employees.

(e) For each private self insurer, the Manager shall calculate ~~a current 1-year average costs per claim by dividing the total incurred liability, for year 2 by the total number of claims reported for year 2 as reported in the Self Insurer's Annual reports submitted for the reporting period immediately prior to the current budget year~~ an individual 1-year number of indemnity claims per 100 employees, using information reported by each self-insurer on its last full year Self-Insurer's Annual Report submitted for the reporting period immediately prior to the current budget year. In this calculation, the manager shall divide the total number of indemnity claims reported in the most recent claim year by the total number of California employees reported, with the result multiplied by 100. Any self-insurer with less than 100 total employees shall be considered to have 100 employees for purposes of this calculation.

Note: Authority cited: Sections 54, 55, 62.7 and 67.9 Labor Code. Reference: Section 62.7 and 62.9 Labor Code. 8 CCR Section 1506.7 went into legal effect on 10 November 1997.

## ATTACHMENT L

### Article 6. Workers' Compensation Loss Control Consultation Services, Annual Health and Safety Loss Control Plan--Requirements and Procedures

#### Section 339.1 Scope and Application

This Article applies to all insurers and insureds as defined in section 339.3.

#### Section 339.2 Effective Dates and Start-up Procedures

- (a) This article shall take effect immediately, except for section 339.4 which shall take effect on April 1, 1994.
- (b) Provisional Certification Periods.
  - (1) Provisional certification shall be granted by the Division for a period of 120 days upon receipt by the Loss Control Consultation Certification Unit of an application which complies, at a minimum, with the requirements of 339.7(b) and (c)(1) through (3).
  - (2) The Division may extend an insurer's provisional certification for an additional period of up to 120 days if the volume of applications received results in the Division's inability to process the insurer's application within the 120 day period.
- (c) Certification Periods
  - (1) The first period of certification shall include the period of provisional certification and shall last for one year unless extended by the Division for the purposes of evenly distributing the workload associated with the ongoing processing of applications for recertification.
  - (2) All subsequent certification shall last for a period of one year.

#### Section 339.3 Definitions

- (a) "Annual Plan" means the insurer's annual health and safety loss control plan.
- (b) "Budget" means a description of anticipated expenditures to be incurred in providing loss control consultation services to targeted employers as described by the insurer's annual plan, including the amount of funds allocated, the categories of services to be funded, and the amount of funding budgeted for each category.
- (c) "Director" means the Director of the Department of Industrial Relations or an authorized representative.
- (d) "Division" means the Division of Occupational Safety and Health.
- (e) "Employer" means any insured.
- (f) "Insured" means any person or entity other than a person or entity which has received a certificate of consent to self-insure pursuant to Labor Code Section 3700(b), which has secured workers' compensation insurance from an insurer.
- (g) "Insurer" means any entity licensed by the California Department of Insurance to write workers' compensation insurance coverage.
- (h) "Loss control" means reduction of exposure to workers' compensation losses and control of significant preventable health and safety hazards to workers.
- (i) "Loss control consultation services" means assistance in recognizing, evaluating, and controlling significant preventable health and safety hazards and other potential sources of workers' compensation losses. Loss control consultation services consist of services provided by an insurer only to those employers to which the insurer has extended workers' compensation coverage.
- (j) "On-site consultation" means observation of an insured's work operations to determine the existence of significant preventable health and safety hazards, including, where appropriate, monitoring of hazardous physical, chemical, and biological agents.
- (k) "Significant preventable health and safety hazards" means those hazards which are capable of being controlled by the employer and which have the potential to substantially affect the frequency and severity of workplace injuries and illnesses and workers' compensation losses.
- (? ) "Targeted employer" means an employer selected by the insurer to receive loss control consultation services, based on the criteria set forth in section 339.11. This term does not include any part of the employer's operations which is outside of California.

NOTE: Where the employer has more than one worksite, "targeted employer" means only those worksites selected by the insurer to receive loss control consultation services based on the criteria set forth in section 339.11.

(m) "Workers' compensation insurance" means only that workers' compensation insurance provided under the laws and regulations of the State of California. This term does not include excess reinsurance or any form of homeowner's insurance.

(n) "Workplace survey" means an evaluation of an insured's work operations which can consist of a comprehensive on-site consultation or any other procedure which effectively identifies significant preventable health and safety hazards to workers.

## Section 339.4 Provision of Loss Control Consultation Services

(a) Every insurer issuing or maintaining a workers' compensation insurance policy covering any employer's current or future operations shall maintain or provide loss control consultation services certified by the Division in accordance with this Article.

NOTE: Insurers may elect to provide all or part of their loss control consultation services through another entity; e.g., consultants, insurance groups or health care organizations, to the extent that the services to be provided meet the requirements of this section. However, such an election shall not alter the insurer's responsibility to maintain certification and to direct and control the provision of all loss control consultation services required by this Article.

(b) At the time the insurance policy is issued, and annually thereafter, the insurer shall provide to each of its insureds a written description of the insurer's loss control consultation services, including a notice stating that the services are available at no additional charge to the insured. The following statement shall be included with the notice: "Workers' compensation insurance policyholders may register comments about the insurer's loss control consultation services by writing to: State of California, Department of Industrial Relations, Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142."

(c) The insurer shall not charge the employer any fee in addition to the insurance premium for the provision of loss control consultation services.

(d) Targeted Employers.

(1) The insurer shall provide loss control consultation services to all targeted employers, which, at a minimum, shall include the following;

(A) Effective evaluation of the employer's operations, including:

1. Comprehensive on-site consultation for each targeted employer identified by the insurer's annual plan
2. Discussions with management, and with permission of the employer, non-management personnel; and
3. Review with appropriate personnel of relevant records, including, but not limited to, the employer's log and summary of injuries and illnesses maintained pursuant to section 14301 and the employer's section 3203 injury and illness prevention program;

(B) Identification of the factors most related to the losses experienced by the employer; including:

1. First aid and other emergency or post-injury response procedures;
2. Workplace health and safety hazards;
3. Management policy and practices related to loss control;

4. The effectiveness with which company loss control policy is communicated among management personnel and between management and non-management personnel;

5. The effectiveness of training;

6. The extent and nature of worker participation in health and safety promotion efforts;

7. The adequacy of recordkeeping;

8. The adequacy of the employer's section 3203 injury and illness prevention program.

(C) Formulation of recommended loss control measures, including specification of those critical to reduction of the employer's losses or potential for losses;

(D) A written report detailing the consultation provided; the findings of the consultation; and all loss control measures formulated pursuant to subsection (d)(1)(C); and

(E) Ongoing evaluation of the targeted employer to determine the impact of the consultation on the employer's loss control experience.

(2) The insurer shall maintain records of all loss control consultation services provided to targeted employers for 4 years and shall make those records available to the Division upon request.

(e) Non-targeted Employers. Loss control consultation services available upon request to non-targeted employers shall, at a minimum, include the following:

- (1) A workplace survey, including discussions with management, and, where appropriate, non-management personnel with permission of the employer;

- (2) Review of injury records with appropriate personnel; and
- (3) Development of a plan to improve the employer's health and safety loss control experience, which shall include, where appropriate, modifications to the employer's section 3203 injury and illness prevention program. Exception: An insurer may, but is not required, to provide loss control consultation services to any insured whose place of employment does not pose significant preventable health and safety hazards to workers. Criteria for determining that a place of employment does not pose significant preventable health and safety hazards must be clearly identified in the annual plan.

## Section 339.5 Requirements for Certification and Recertification of Loss Control Consultation Services.

(a) Certification lasts for a period of one year, except as specified by section 339.3. To apply for certification or recertification, an insurer must submit a completed application and all supporting documentation as required by section 339.7.

(b) To qualify for certification and recertification the insurer shall demonstrate that: (1) The insurer has developed and is prepared to implement an annual plan which meets the requirements of section 339.6; and (2) The insurer has the capability to deliver effective loss control consultation services meeting the requirements of section 339.4. Such a demonstration shall include, but not be limited to, each of the following:

(A) Identification of each entity supplying loss control consultation personnel, if consultation services are to be provided by personnel other than employees of the insurer;

(B) A description of the categories, the number in each category, and the individual qualifications, including professional licenses and certification, of the personnel who will be providing loss control consultation services.

(C) A detailed description of the services to be provided by each of the personnel and the types of industrial activities and settings with which their services will be associated, together with an explanation of how these personnel are qualified to address these activities and settings.

(D) An estimate of:

1. The number of on-site consultations the insurer's loss control consultation personnel will provide for the coming certification year, specifying what portion will consist of consultations to targeted employers;

2. The average number of hours to be spent on each on site consultation, not including preparation and travel time; and

3. The number of workplace surveys not consisting of on-site consultation to be provided for the coming certification year, including the average amount of time to be spent per survey.

(c) To maintain certification, the insurer shall notify the Division of any substantial change in the information provided to obtain certification from the Division and shall cooperate with any audit or request for information by the Division to determine the effectiveness of the loss control consultation services by the insurer.

(d) The Division shall provide written notice to the insurer of any findings of deficiency related to the loss control consultation services audited by the Division, and any corrective actions deemed necessary to retention of the insurer's certification by the Division.

## Section 339.6 Annual Health and Safety Loss Control Plan.

(a) Every insurer seeking certification or recertification shall submit an annual plan as required by section 339.7(c)(5).

(b) The annual plan shall detail the insurer's program objectives for delivering loss control consultation services to those insureds selected as targeted employers, and shall include, at a minimum, the following:

(1) A budget;

(2) The methodology used by the insurer to select targeted employers;

NOTE: Section 339.11 contains guidelines for selecting targeted employers.

(3) One-year and three-year loss reduction goals for targeted employers;

(4) Size, type and identity of each targeted employer for the coming year; and

(5) A description of the loss control consultation services provided to targeted employers during the previous year; including:

(A) Identity of targeted employers served and a summary of the services provided to each;

(B) Total expenditures for all targeted employers served;

(C) Evaluation of the effectiveness of the consultation provided; including the extent to which the previous year's loss reduction goals were met for targeted employers and an analysis of any failure to meet such goals; and

(D) A list of all employers to whom loss control consultation services have been provided through an entity other than the insurer or the insurance group to which the insurer belongs. The list shall include the identification and qualifications of the personnel who provided the consultation services.

(c) The plan shall demonstrate that the insurer has reliably identified as targeted employers those of its insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards, and that the insurer's loss control consultation services will effectively serve the needs of targeted employers.

(d) The Division shall maintain the confidentiality of all information provided by the plan, except for aggregate statistical data.

### Section 339.7 Application for Certification or Recertification of Loss Control Consultation Services.

(a) Applications may be obtained from the Loss Control Consultation Services Certification Unit of the Division.

(b) The application (Form LCC-1, 10-94) shall be lodged with the Loss Control Consultation Services Certification Unit and shall be accompanied by the required application fee.

(c) The application shall provide, be accompanied by, or be supplemented with the following items:

(1) Names under which the applicant is authorized to write workers' compensation insurance.

(2) Name and address of the insurer's employee directly responsible for administering insurer's loss control consultation services;

(3) Proof of the authorization from the California Department of Insurance to write workers' compensation insurance within the State of California;

(4) Documentation demonstrating the insurer's capability to deliver loss control consultation services as described by section 339.5(b)(2);

(5) A copy of the insurer's annual plan

(6) Any additional information requested by the Division, if reasonably necessary to evaluate the insurer's suitability for certification consistent with the requirements of this Article.

(d) Within 30 business days of receipt of an application for certification the Division shall inform the applicant in writing that the application is either complete and accepted for filing, or that the application is deficient and requires supplementation with additional information or documentation.

(1) An application shall be deemed complete if it is in compliance with the requirements of this section.

(2) A notice that the application is deficient shall explain what specific information or documentation is required to complete the application.

NOTE: If the volume of applications received results in the Division's inability to process the insurer's start-up application for certification in compliance with the 30-business-day period, the Division may extend the period for up to 120 days. Where such an extension is made by the Division, the insurer's period of provisional certification shall be deemed extended by an equal amount of time pursuant to section 339.2(b).

(e) Within 30 business days of the date of acceptance for filing of a completed application, the Division shall issue to the applicant;

(1) A Notice of Certification which includes the date of expiration of the certification and specifies any conditions which attach to retention of the certification; or

(2) A Notice of Denial of Certification, accompanied by a written explanation of the reasons for the denial.

### Section 339.8 Fees for Certification and Recertification of Loss Control Consultation Services.

(a) The fee per application for certification and recertification of loss control consultation services shall be the greater of \$100.00 or 0.0125 percent of the amount (i.e., the amount multiplies by 0.0001250 of the applicant's direct written premiums reportable on the latest calendar year "Call for California Workers' Compensation Experience" the applicant has filed with the Workers' Compensation Insurance Rating Bureau of California.

(b) All application fees collected pursuant to this article shall be deposited in the Cal/OSHA Targeted Inspection and Consultation Fund, as provided in section 62.7 of the Labor Code.

NOTE: The Division may increase the insurer's certification fee on a prorata basis to compensate for any extension of the insurer's certification period beyond one year which is granted by the Division pursuant to section 339.2(c)(1) of this Article.

### Section 339.9 Denial of Certification or Recertification.



- (a) The Division shall deny certification or recertification if the insurer does not satisfy the requirements of this Article.
- (b) An applicant denied certification may:
  - (1) Reapply by submitting a new application together with a new application fee; or
  - (2) Appeal for reconsideration to the Director.
- (c) Any applicant who wishes to appeal a denial of certification shall lodge with the Division, within 10 working days of receipt of the Notice of Denial, a written notice of the applicant's intent to appeal.
  - (1) The Director shall hold a hearing, at the Division's headquarters offices or such other location as the Director may designate, within five working days of the appeal.
  - (2) At the hearing, the insurer shall have the burden of establishing qualification for certification.
- (d) The Director shall issue a decision within 10 days of the hearing. The Director's decision shall be final. A final decision by the Director may not be appealed except as provided for by law.
- (e) The Insurance Commissioner shall be notified of every final decision by the Director to deny certification.

### Section 339.10 Revocation, Suspension or Attachment of Conditions to Certification.

- (a) The Division may at any time, upon a showing of good cause and after notice and an opportunity to be heard, revoke, suspend or attach conditions to the retention of, any certification issued pursuant to this article. Good cause shall be deemed to exist if the Division establishes that the insurer has substantially failed to meet or comply with the requirements of this article.
- (b) Notice of the Division's intent to take any adverse action with respect to a certification shall be in writing and served at least fifteen days in advance of the hearing. Service shall be deemed complete if notice of the hearing is sent by certified mail or hand delivered to the address shown on the application form. The notice shall specify the action intended to be taken by the Division and the reasons for the action in sufficient detail to allow the insurer to prepare for the hearing.
- (c) The hearing shall be held at the Division's Headquarters offices or at such other location as may be designated by the Director, and shall be conducted by the Chief or Deputy Chief of the Division.
- (d) The insurer may appeal any adverse action to the Director in the same manner as provided for appeal of denial of certification by section 339.9(c) and (d) and the filing of an appeal shall stay the adverse action until the issuance of a final decision by the Director.
- (e) The Insurance Commissioner shall be notified of every final decision by the Director to suspend or revoke certification.

### Section 339.11 Guidelines for Selecting Targeted Employers.

- (a) Section 339.6(b)(2) requires the insurer's annual plan to include a methodology for selecting targeted employers and section 339.6(c) requires the annual plan to demonstrate that the insurer has reliably identified as targeted employers those of its insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards, and that the insurer's loss control consultation services will effectively serve the needs of targeted employers.
  - (b) The Division will review the annual plan to determine the effectiveness of the insurer's targeting methodology. Targeting methodology may be different depending on the insurer and the type of insureds served, but shall utilize an effective combination of any of the following factors, or similar factors:
    - (1) Type, number, and rate of occupational injuries and illnesses;
    - (2) Number of workers' compensation claims, or injuries and illnesses, per payroll or premium dollar;
    - (3) Severity of workers' compensation claims, or injuries and illnesses, per payroll or premium dollar;
    - (4) Experience modification rating, or other ways of comparing the employer's loss experience to similar employers;
    - (5) Data from the insurer's previous evaluations of the employer; and
    - (6) Cal/OSHA citation history.
- Exception: Other information, e.g., direct written premium per employer or the number of employees per employer, may be used as additional factors to be considered in selecting targeted employers. However, such information shall not be used in a manner which results in exclusion of those insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards.

ATTACHMENT M

Sample Summary of Insured Employer Experience  
with the Loss Control Certification Program,  
as Reported by Their Insurers

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**SAMPLE SUMMARY OF INSURED EMPLOYER  
EXPERIENCE WITH THE LOSS CONTROL  
CERTIFICATION PROGRAM, AS REPORTED BY  
THEIR INSURERS**

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LOSS CONTROL CERTIFICATION UNIT

JANUARY 2000

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## INTRODUCTION

Insurance Code 11721 and Labor Code 6354.5 require workers' compensation insurers to maintain or provide loss control services to their policyholders certified by the Director of Industrial Relations. Title 8, California Code of Regulations, §339.1 through 339.11 were created to implement the provisions of the statute. Insurers are required to submit annual plans that contain the insurer's methodologies used to select insured employers with the greatest workers compensation losses and the most significant preventable health and safety hazards. Insurers are further required to identify the employers selected, describe the types of services delivered to the employers and to provide an evaluation of the effectiveness of the services delivered.

Since its inception in 1994, the Loss Control Certification Unit (LCCU) in the Division of Occupational Safety and Health, has been charged with the administration of this program. The LCCU has divided its responsibilities into three sections:

- The Certification section which reviews each insurer's annual plan to determine its compliance with the statute and regulation;
- The Evaluation section which audits or evaluates the insurers compliance with the regulatory provisions for delivery of loss control services to employers targeted for service in insurers' annual plans; and
- The Administrative section that verifies the insurer workers compensation authority, establishes basis for the collection of insurer fees, and maintains all records of the LCCU.

The LCCU has been receiving and gathering information from insurers. The existing regulation allowed the information reported by insurers to be both objective and subjective. The information "required" was not consistent across insurer groups because the regulation permitted insurer choice in selection methodologies. The statute does not give the division authority to independently verify the data reported by insurers. For the purposes of this report, the insurer generated data is assumed to be valid and true.

In 1998, the Division recognized a need to revise the regulation. A Regulatory Advisory Committee was created to propose changes to existing regulation. In support of this process, the LCCU staff undertook a study to objectively assess the information in its possession and make a preliminary analysis of the available data. The ultimate goal of

the data review is to determine the effectiveness of the Loss Control Certification Program and to develop means to monitor its effectiveness in carrying out its mission. However, due to a lack of comparability of insurer reported data, tests of statistical validity cannot be applied to the data contained in this report.

## SAMPLE DESIGN

A sample size of twenty (20) certified insurer groups, which included an average of 64 authorized insurers per year, was selected to accommodate staff time and LCCU resource constraints. The population of insurer groups to be sampled was limited to only those insurer groups whose performance had been evaluated (audited) by the LCCU. At the time of selection, eighty (80) insurer groups had completed the evaluation process. Each of the 80 evaluated insurer groups was ranked and ordered by its “date of evaluation.” A “pseudo-random number generator” was located (<http://www.randomizer.org>), and following the rules of this randomizer, a unique set of twenty unordered numbers was generated. Each insurer whose rank matched a number on the “unordered” list was designated a “subject.” This sample size does not support statistically reliable analyses. However, the sample does fairly represent the group of certified insurers and support the historical observations made by the LCCU with regard to the insurers’ programs.

Forms were developed to methodically capture all known data sets for each insurer, for each part of the process -- certification and evaluation. The current annual plans, evaluation files, and administrative records for each of the selected insurers were reviewed. The data was then analyzed using simple statistical functions: count, total and average. Confidence limits were reviewed in some instances, but no statistical tests were applied to the data. Resulting information was tabulated for comparison to each of the subjects, as well as all the other insurer groups.

The data retrieved from the annual plans are information submitted by insurers to justify certification of loss control consultation programs. The evaluation process is an attempt by the LCCU to validate the information provided by the insurers. Evaluators validate the execution by the insurers of their annual plans as certified, from the documentation provided by insurers at the time of the evaluation.

The data from these two processes, certification and evaluation, are monitored separately and analyzed independently. The results do not always correspond due to the time of data collection by the LCCU and valuation dates of the data gathered. In annual plans, insurers are required to report information on all targeted employers. Evaluators review only a sampling of insurer services files. The selection of insurer service files reviewed by evaluators is not random. Files are selected by the LCCU to allow the insurer the opportunity to demonstrate compliant service to a cross section of targeted employers.

## RESULTS

The following information is developed from data for Plan Years 1994 – 1998. The insurers in the study group comprised 25% of the qualifying insurer groups – those that had been evaluated. The study group averaged 64 insurers per year. The sort randomly included 50% of the top ten insurers by market share.

Data described Table 1 is as reported by insurers in their certified annual plans for the total of their respective targeted employer populations. Column four (1<sup>st</sup> Year Non-Renewals) indicates the high annual turnover of employer policies since the advent of open rating.

Table 1

### Non-Renewals

Plan Year	Targets		1st Year Non-Renewals	3rd Year Non-Renewals
	Identified	Serviced		
1994	1161	64.4%	33.1%	65.3%
1995	707	72.4%	47.9%	67.3%
1996	380	53.9%	31.6%	
1997	376	59.0%	40.4%	
ALL	2624	64.3%	37.9%	66.1%

Source: Certification Data

Figures in Table 1 apply only to targeted employers but reflect the high turnover in carrier books of business as a whole. Turnover is significant when any attempt is made to measure the effectiveness of loss control services by individual employer. An employer's loss reductions cannot be measured by an insurer when a policy is non-renewed within a given certification period. Employers are targeted for a three-year period. Tracking of long term loss reductions by individual employer is most difficult with this high degree of turn over. Significant numbers of employers non-renewed their policies before loss control services were provided.

Table 2 describes the costs to insurers for providing loss control services as reported in annual plans. Budget data are submitted in advance of certification, while expenditures are reported after a plan year is completed. Also described is the relationship of the study group of insurers to the total insured groups by certification year and share of market premium.

Table 2

### Expenditures / Direct Written Premium

Plan Year	targets	Budget		Expenditures		Market Share	
		Average cost per targeted	Average hourly rate	Average cost per targeted	Expenditures/ DWP	Study # Grps/ Total # Grps	Study Grp DWP/ Total DWP

1994	1153	\$ 2,317.92	\$ 147.73	\$ 3,123.60	0.10%	18.7%	18.6%
1995	718	\$ 1,502.21	\$ 80.77	\$ 1,601.94	0.06%	18.9%	18.1%
1996	422	\$ 1,391.53	\$ 77.74	\$ 2,873.49	0.05%	19.6%	20.3%
1997	417	\$ 2,242.11	\$ 81.28	\$ 3,731.03	0.07%	17.4%	19.9%
1998	386	\$ 2,407.01	\$ 89.04	N.A.	N.A.	16.1%	22.1%
All	3096	\$ 2,003.37	\$ 89.21	\$ 2,274.35	N.A.	N.A.	N.A.

Source: Certification Data

The costs expressed in Table 2 as a percentage of Direct Written Premium (DWP) have declined from one tenth of one percent to seven hundredths of one percent. Average costs per targeted employer may reflect variations in size and complexity of service requirements to targeted employers. There are no reported indications that the costs to service individual targeted employers vary from the costs to service any other insured employer of the same size and complexity.

The data in Table 3 is reported from information supplied by insurers at the time of evaluation. Since this data is reported two to three years after the insurer submits an annual plan, the costs differ from the estimates supplied for certification. Table 3 identifies data from evaluations in which three full years of targeted employer information have been reported.

Table 3

Targeted Expenditures

Year	targets	targeted, % Policyholders	targeted, % WC-LC hours in CA	targeted, % on-site consultations	targeted, % Expenditures	Reported Cost \$/hr	Hrs/TE, calculated	LC Expenditures ( <u>all</u> ) in CA, \$, calculated
1994	1152	2.0%	17.3%	24.8%	14.0%	\$ 83.13	5.0	\$ 11,395,168.00
1995	701	1.4%	10.5%	9.6%	8.0%	\$ 94.41	6.6	\$ 10,228,268.00
1996	250	0.7%	4.8%	3.4%	8.4%	\$ 102.19	6.7	\$ 7,021,701.00
All	2126	1.5%	11.8%	15.2%	13.1%	\$ 95.70	5.9	\$ 29,242,860.00

Source: Evaluation Data

Also described is the relationship of targeted employers to the insurers total population of insureds. The percent of targeted employers to total policyholders has consistently declined. Employers are targeted for service until three-year loss reduction goals are measured. The pool of eligible targeted employers is reduced as employers are targeted each year for a three-year period. Total hours committed to targeted employers have declined proportionally. Regulation requires on-site consultations only during the first year of selection in an annual plan. Subsequent services are to be provided based on the need of the employer and the evaluation of the effectiveness of the services provided. The ratio of expenditures for servicing targeted employers to total insurer loss control expenditures declined 40% from 1994 to 1996. These costs, reported by insurers, are in stark contrast to reports of program costs published elsewhere.

The last column in [Table 3](#) lists the insurers total loss control expenditures for providing services to its entire book of policyholders in California. This data is often reported by insurers for calendar years, or for fiscal years, rather than as an extrapolation of total loss control expenditures for the annual certification period.

The regulation requires insurers to report an evaluation of effectiveness of service to targeted employers. [Table 4](#) describes this information as reported by insurers by aggregate summaries for all targeted employers for a given annual plan.

Table 4

Aggregate Summaries

Annual Report Summaries								
	targets			1-year Goals*			Reductions	
Plan Year	Identified	Serviced	Non-Renewed	Objective Met*	Objective Not Met*	Data Not Reported*	Frequency	Severity
94	1161	64.4%	33.1%	42.2%	34.4%	23.4%	41.4%	25.4%
95	707	72.4%	47.9%	66.3%	21.5%	12.2%	**31.3%	**33.2%
96	380	53.9%	31.6%	46.5%	33.1%	20.4%	44.4%	23.9%
97	376	59.0%	40.4%	64.7%	19.2%	16.1%	64.0%	24.8%
All	2624	64.3%	37.9%	48.9%	27.7%	18.4%	41.7%	27.5%
* For in-force policies								
** Reports incomplete								

Source: Certification (Frequency and severity calculations include reporting from some non-renewals)

Insurers are also required to report on the provision of loss control services during the first year the employer was targeted. The plans include the measurement of the targeted employer one and three-year goal accomplishment. The “1-Year Goals\*” in [Table 4](#) are expressed for those insureds whose coverage continued throughout the first year of an annual plan. Goals may be expressed by individual targeted employer or by the population of targeted employers in a given plan. The provision of loss control service to identified targeted employers varies by insurer and by year. Insurers select employers for an annual plan sixty to ninety days prior to the plan’s effective date. Many employers non-renew their workers’ compensation coverage between selection and the inception of the plan period. The actual number of on-site consultations to employers has been reduced in proportion to the increasing number of policy non-renewals. As insurers have utilized more specific selection methodologies to select targeted employers and become more familiar with regulatory service requirements, a higher percentage of employers who continue to be policyholders have actually received service. However, there continues to be a number of targeted employers selected by their insurers that have not received loss control service from their insurer as mandated by the statute and regulation.



Columns “Objectives Met” and “Objectives Not Met” in both Table 4, and in Table 5 (below), describe results attained by the employer relative to goals established by the insurer. Table 4 reports these results for group targeted employer goals, while Table 5 includes the same type of measurement as reported for individual targeted employers. Both Tables describe the goal achievement only for those targeted employers who remained insured throughout at least one complete year of a certified plan.

Table 5

For Percent of In-Force Policies  
1-Year

Plan Year	1-year Goals			1-year Reductions	
	Objective Met	Objective Not Met	Data Not Reported	Frequency	Severity
1994	42.2%	34.4%	23.4%	39.9%	24.5%
1995	66.3%	21.5%	12.2%	43.5%	46.2%
1996	46.5%	33.1%	20.4%	35.0%	18.8%
1997	64.7%	19.2%	16.1%	63.4%	24.6%
Average	48.9%	27.7%	18.4%	43.2%	28.5%

Source: Certification Data (excludes non-renewals)

For Percent of In-Force Policies  
3-Year

Plan Year	3-year Goals			3-year Reductions	
	Objective Met	Objective Not Met	Data Not Reported	Frequency	Severity
1994	29.9%	25.7%	44.4%	29.4%	18.1%
1995	41.5%	30.4%	28.1%	39.3%	21.0%
Average	33.9%	27.2%	38.9%	32.8%	19.1%

Source: Certification Data (excludes non-renewals)

Regulations require insurers to establish one and three year loss reduction goals for their targeted employers. Often insurer selection methodologies and goals are not related. However, improvements in frequency and severity of targeted employer losses are identified when reported by the insurer. Table 5 indicates the percentage of insurer goals met by targeted employers for those employers that remained insured for the one full year of an annual plan and, separately, for those that were insured through the third year. While goals are not required to be expressed as frequency or severity reductions, there appears to be a correlation between the targeted employer achieving the goal set by the insurer, and achieving a reduction in frequency or severity of losses.

By the end of the 1997 annual plan cycle, insurers reported that 64.7% of targeted employers who had been covered for the full one-year term had achieved their one-year loss reduction goal. Over one third of the employers covered through the third year of an annual plan achieved the three-year loss reduction goal. The employer who achieves a three-year goal, in most instances, has recorded a significant achievement. Three-year goals are often expressed as the equivalent of three times the reduction of the one-year goal.

Regulations require insurers to report service activity to their targeted employers for the first year of an annual plan. Table 6 indicates that when required service activities are

Table 6

For Percent of Reported Activities

Plan Year	1-year Goals		1-year Reductions	
	Objective Met	Objective Not Met	Frequency	Severity
1994	55.1%	44.9%	52.1%	31.9%
1995	75.5%	24.5%	49.5%	52.6%
1996	58.5%	41.5%	44.0%	23.7%
1997	77.1%	22.9%	75.5%	29.3%
Average	64%	36%	54%	35%

Source: Certification Data

Plan Year	3-year Goals		3-year Reductions	
	Objective Met	Objective Not Met	Frequency	Severity
1994	53.7%	46.3%	52.9%	32.6%
1995	57.8%	42.2%	54.7%	29.2%
Average	55.4%	44.6%	53.6%	31.2%

Source Certification Data

reported by insurers, for individual targeted employers, there is a 19% (1997) increase in the first year goal achievement. The variation in results between Table 4 and Table 5, covering the same population, can be attributed to reporting the group results versus results reported by specific employer. Of greater significance, shown in Table 6, are the results of targeted employer frequency and severity reductions when loss control service to individual employers is reported. In the 1997 annual plan cycle insurers reported that 75.5 percent of the targeted employers who were provided loss control service achieved reductions in the frequency of losses.

Table 7 begins a discussion of service data developed during the evaluation (audit) process. Evaluations (audits) of insurer performance measure compliance to the insurer annual plans and the regulation. They are attempts to validate insurer annual plan reports of service to targeted employers.

Table 7

Evaluation of Services
------------------------

Plan Year	Groups Evaluated	Number of Targeted	Targeted Evaluated	Serviced According to Reg/Plan*	Not Serviced According to Reg/Plan	Judged Not Serviceable
1994	19	1152	11.4%	37.4%	59.5%	3.1%
1995	19	701	19.4%	44.9%	48.5%	6.6%
1996	12	250	37.2%	50.5%	39.8%	9.7%
	53	2126		42.5%	51.3%	6.2%

Source: Evaluation data

Loss control service to a sample of identified targeted employers is evaluated for each annual plan certified by the LCCU. Sample targets are selected so as to review different sizes, as well as different types of employer operations with varying complexity of safety and health exposures. LCCU Plan Evaluators review insurer loss control service files and loss data supplied by the insurer. The percentage of targeted employer files evaluated will vary by the volume of targeted employers selected by the insurer for each plan. The LCCU will normally evaluate compliance to two to three annual plans during one insurer evaluation. As the population of targeted employers has declined, the division has evaluated a larger proportion of employer service files.

Table 7 data indicates that insurers serviced 26% more targeted employers according to their plans and regulation in 1996 than were serviced in 1994. To be certified, insurers must report that service will be, at a minimum, that which is required in the regulation. Insurers may commit to additional services, which will be evaluated if included in an annual plan. Those employers judged not serviceable are employers whose policies non-renewed during the plan year, employers who refused service, or other conditions over which the insurer had no control.

Table 8 measures the service plan elements (referred to in Table 7) required by regulation.

Table 8

Evaluation Elements (From Table 7)
---------------------------------------

*Regulatory Service Elements								
Comprehensive Onsite Consultations	Discussions with Management	Review IIPP & Records	Identified Loss Trends	Developed Recommendation(s) for Major Loss Cause(s)	Developed Recommendation(s) for Other Loss Cause(s)	Consultant Prepared Report	Consultant Sent Report to targeted	Ongoing Evaluation & Follow-Up
42.0%	31.3%	31.3%	45.0%	35.1%	27.5%	37.4%	35.1%	24.4%
49.3%	51.5%	45.6%	51.5%	41.2%	42.6%	50.7%	47.8%	36.0%
61.3%	60.2%	59.1%	64.5%	43.0%	49.5%	58.1%	50.5%	36.6%
50.3%	47.0%	44.1%	53.0%	39.0%	40.1%	49.5%	45.2%	32.8%

Source: Evaluation

For service to be compliant, loss control files must demonstrate that all service elements have been provided to the targeted employer. If any element is omitted, mandatory corrective actions are issued to the insurer to bring its service into compliance with its own plans and the regulation. The data for plan years 1994, 1995 and 1996 indicate that by 1996 insurers were providing on-site consultations to only 61.3% of the evaluated employers. While insurers identified major causes of loss in 64.5% of the files reviewed, recommendations were developed in only 43% of the cases. The employer's Injury and Illness Prevention Program was evaluated less than 60% of the time, while evaluation of the effectiveness of service or recommendation follow-up was provided to only 36.6% of the employers.

The regulation stipulates no required format to document service by insurers. Some of the failures to demonstrate compliant service may be laid to documentation problems, however, there remain many targeted employers that have not received the services mandated in the law.

Goal achievement, reported in [Table 9](#), is taken from data provided by insurers at the time of the evaluation. Plan Evaluators, using reported claims per one hundred employees, calculate frequency and severity results. Goals, established for targeted employers by insurers, are not required to be expressed in terms of frequency and severity rate reductions. The LCCU calculates these indices in an attempt to measure the effectiveness of loss control service regardless of selection methodologies and insurer goals.

Table 9

Evaluation Goals

Plan Year	Groups Studied	1-year Results					3-year Results				
		Goals			Frequency	Severity	Goals			Frequency	Severity
		Achieved	Not Met	Irrelevant	Improved	Improved	Achieved	Not Met	Irrelevant	Improved	Improved
1994	19	37.4%	39.7%	22.9%	15.3%	11.5%	21.6%	37.8%	40.5%	9.0%	8
1995	19	35.3%	36.8%	27.9%	19.1%	17.6%	15.3%	21.4%	63.4%	14.5%	14
1996	12	45.2%	25.8%	29.0%	17.2%	16.1%	10.5%	11.8%	77.6%	15.8%	10
All		38.7%	34.7%	26.6%	*	*	15.8%	24.2%	60.0%	*	*

Source: Evaluation Data

Results from evaluations will vary widely from those reported by insurers in subsequent annual plans. A significant reason for the varying results is the effective dates of the loss data when goals are measured. Losses reported at evaluations are aged compared to loss information provided in Annual Plans. Evaluators reported an 18% increase in one-year goal accomplishment from 1994 to 1996. [Table 9](#) indicates that three-year goal accomplishment has declined largely to more stringent three-year goals established by insurers. Improvements in frequency rates each year are noted. Irrelevant goals ([Table 9](#), columns 5 & 10) are those that do not relate to loss reductions, and those goals which could not be measured due to the non-renewal of the employer's coverage, and those for which an insufficient time had elapsed.

The information in [Table 10](#) details only evaluation data where the insurer supplied information in all categories. Results from employer service files, for which complete data was supplied by the insurer, indicates that there may be a connection between goal achievement and frequency and severity rate reduction.

Table 10

## Summary of Outcomes for Select Group of Targets

I-year Results					3-year Results				
Goals			Frequency	Severity	Goals			Frequency	Severity
Achieved	Not Met	Irrelevant	Improved	Improved	Achieved	Not Met	Irrelevant	Improved	Improved
39.4%	37.8%	22.8%	28.5%	23.2%	16.8%	26.8%	55.3%	23.5%	20.7%

Source: Evaluation Data

Data is for those targeted employers that had data in all categories

Irrelevant goals (Table 10, columns 3 & 8) are those than could not be measured due to non-renewal of the policy or for which an insufficient time had elapsed to calculate.

Table 11 and Table 12 indicate the significance of the delivery of regulated loss control service to targeted employers. These tables identify those employers provided loss control service according to the regulation compared to the percentage of all targeted employers, in force and non-renewed, selected in annual plans. Goals, established by insurers for their targeted employers, expressed both individually and as a group of targeted employers, are identified in Table 11.

Table 11

## Targeted Goals Identified / Serviced

1 Year Goal				
Targeted				
Plan Year	IDENTIFIED		SERVICED	
	Objective Met	Objective Not Met	Objective Met	Objective Not Met
1994	28%	23%	44%	36%
1995	35%	11%	48%	15%
1996	32%	23%	59%	42%
1997	69%	11%	65%	19%
ALL	32%	18%	50%	28%

Source: Certification

Insurers continue to report improvement each year in the accomplishment of loss reduction goals for their targeted employers. The ratio of one-year goal accomplishment increases each year for those targeted employers to whom regulated loss control services were provided. As indicated, by the completion of the 1997 certification year, 65% of targeted employers, to whom loss control services had been provided, achieved the loss reduction goal established by the insurer.

Table 12 covers the same targeted employer population; those targeted employers that received regulated loss control service, compared to all identified targeted employers.

Table 12

Targeted Frequency / Severity Reductions

1 Year Goal				
Targeted				
Plan Year	Reductions			
	FREQUENCY		SEVERITY	
	IDENTIFIED	SERVICED	IDENTIFIED	SERVICED
1994	27%	41%	16%	25%
1995	23%	31%	24%	33%
1996	24%	44%	13%	24%
1997	38%	64%	15%	25%
ALL	27%	42%	18%	28%

Source: Certification

By the completion of the fourth year in the loss control certification program, these sampled insurers' targeted employers achieved significant loss reduction results. When serviced by their insurers, 64% of these targeted employers have reduced loss frequency rates.

## FINDINGS

This compilation of sample insurer data for targeted employers and its assessment by the LCCU indicate that the Loss Control Certification Program continues to meet its statutory mandate. While the regulation does not require the form and format for the reporting of insurer data, objective reports by insurers and the evaluation by the LCCU of objective insurer records, indicate that insurers have successfully identified populations of insured employers with substantive workers' compensation losses and significant preventable health and safety hazards. Data further indicates that insurer's loss control services, when delivered to targeted employers, has a positive impact on the reduction of workers' compensation losses. This Sample Summary also indicates opportunities for improvement in the program through regulatory revisions.

The Sample Summary further finds that:

- Analysis indicates that loss control service delivered to targeted employers has a significant positive impact on targeted employers' workers' compensation losses. Insurers reported that

for the 1997 plan year, 75.5% of targeted employers that had been provided loss control services, and remained insured through the first year of the annual plan, reduced their loss frequency.

- Costs to insurers to identify their policyholders with the greatest losses and to provide services directed toward the causes of those losses are reasonable and do not present an undue burden on insurers. For plan year 1997, these expenditures were reported by insurers as averaging 0.07% (seven one-hundredths of one percent) of direct written workers' compensation premium.
- From 1994 through 1997, expenditures for this program as a percent of insurers direct written workers' compensation premium declined 30%. Over the same period costs, expressed as a percent of insurers total loss control expenditures, declined 40%.
- The regulation does not require insurers to use a single methodology to select an identifiable segment of insured employers. Selection methodologies used by insurers vary widely and do not indicate that the employers with the greatest workers' compensation losses and the most significant preventable health and safety hazards are consistently identified from year to year and from plan to plan.
- Insurers have attempted to refine selection methodologies to more accurately reflect insured employers' more recent loss experience. By the application of these methodologies, the percent of targeted employers to total insured employers has steadily declined. By 1996, insurers were targeting 0.7% of all their workers compensation policyholders. Targeting employers for a three year period also reduces the population of eligible targeted employers in a given insurer book of business.
- Neither the statute nor regulation require insurers to report specific employer frequency or severity loss reductions achieved as a result of loss control services provided by insurers. Insurers report frequency and severity reductions only when relative to loss reduction goals established in certified annual plans. The LCCU is able to measure some frequency and severity reduction when objective data is supplied during the evaluation process.
- The high turnover in policyholders due to the competition caused by open rating reduces the capability to track improvements in loss reduction by individual employer. Non-renewal of targeted employer policies in the first year of insurer annual plans averaged 37.9%. Non-Renewals averaged 66.1% by the third year of the targeted employer's inclusion in annual plans.
- The regulation gives no specific authority to the division to enforce insurer delivery of loss control services within employer policy periods. Large numbers of targeted employers selected to receive service in insurer annual plans, non-renew their coverage before loss control services are provided.
- The regulation does not require insurers to report data consistently or uniformly, making the analysis of the accumulated data difficult.

## RECOMMENDATIONS

This Sample Summary has indicated that the Loss Control Certification Program has met, and continues to meet, the mandates of its implementing statute. The Summary also indicates that improvements may have to be made to the Program to reduce the administrative burden on insurers, to more accurately and consistently identify a more consistent population of employers



that should be targeted, and to ensure that regulated loss control services are actually delivered to targeted employers.

The findings of the Summary suggest the following recommendations:

- Selection methodologies should be uniform for all insurers to assure that an identified population of employers with the greatest workers' compensation losses and most significant preventable health and safety hazards is consistently and reliably identified. Employers that meet regulatory methodologies should become targeted employers irrespective of who their individual insurer is. The existing regulation should be revised to require uniform methodologies.
- Workers Compensation Rating Bureau data should be utilized both as the basis for selection methodology thresholds, and to validate the effectiveness of loss control services provided by insurers. Uniform selection methodologies will allow tracking of loss reductions by employer despite change of insurers. The existing regulation should be revised to require the use of Workers' Compensation Rating Bureau data as the basis for the selection of targeted employers.
- Revise the regulation to remove those current annual plan elements that will no longer be necessary when uniform selection methodologies are adopted. Such elements include the prospective list of targeted employers, the estimate of the numbers of on-site consultations to be provided to targeted employers in the upcoming certification cycle, the estimate of the number of surveys without on-site consultation scheduled for the upcoming cycle, and the precise budget allocations for the provision of loss control services to all targeted employers to be identified and serviced in the upcoming certification cycle.
- Adoption of uniform methodologies will render the prospective identification of targeted employers unnecessary. Targeted employers will be identified and serviced by policy year as policies renew. The LCCU may compare the insurer's list of targeted employers, serviced in a completed certification cycle, to the Rating Bureau data to determine the level of compliance by insurers to the uniform selection methodologies. The regulation and, if necessary Labor Code 6354.5, should be revised to provide a penalty structure to ensure compliance by insurers.
- Revise the existing regulation to specify the type and format of information to be reported to the LCCU.
- Two separate relational databases should be developed by the LCCU to be maintained by the two operational sections, Certification and Evaluation. Databases should include information from all plans beginning with the 1994 certification year. Existing databases should be revised in light of regulatory revisions adopted.
- Rule making begun in 1998 should move forward in light of these findings to improve the effectiveness of the program and to further implement the mandate of the legislature.

# ATTACHMENT N

Authorized and Filled DOSH Positions Supported by Funding Based on the 1993 Workers' Compensation Reform Legislation and the 1995 Amendments

**Authorized and filled DOSH positions supported by funding based on the 1993 Workers' Compensation Reform Legislation, it's 1995 amendments, and FY 1999-00 Finance Letter (No. FL-6) Augmentation.**

## 40 - DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

	Number Originally Authorized	Additional Positions FY95/96 BCP	Eliminated Positions FY96/97 BCP	Net Authorized	Number Filled
<b>LOSS CONTROL CONSULTANT CERTIFICATION (LCCU)</b>					
Research Manager II	1	-	-	1	-
(Reclassified to Loss Control Cert. Unit Manager )			-	-	1
Senior Industrial Hygienist	1	-	-	1	0
Senior Safety Engineer	1	-	-	1	1
Assoc. Gov. Program Analyst	1	3	-	4	1
(3 Reclassed to Loss Control Plan Evaluator)					2
Office Technician	1	1	-	1	1
(1 Reclassed to Office Assistant)					
Office Assistant	1	-	-	1	1
<b>TOTAL - LCCU</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>9</b>	<b>7</b>

## **TARGETED CONSULTATION UNIT**

Regional Manager	1	-	-	1	0
Area Manager	3	-	-	3	3
Senior Industrial Hygienist	1	-	-1	0	-
Associate Industrial Hygienist	20	-	-5	12	10
(Reclassified to Nurse Consultant II)				1	1
Associate Safety Engineer	21	-	-9	12	11
(Reclassified to Assistant Safety Engineer)				2	1
Assoc. Gov. Program Analyst	1	-	-1	0	-
Research Writer	1	-	-1	0	-
Health Education Consultant I	1	-	-	-	-
(Reclassified to Staff Services Analyst)			-1	0	-
Staff Services Analyst	1	-	-	-	-
(Reclassified to Information Systems Tech.)				1	1
Office Technician	3	-	-1	1	1
Office Assistant	11	-	-	4	4
(Reclassified to Management Services Tech.)				1	1
(Reclassified to Secretary)				1	0
(Reclassified to Stenographer)				2	1
(Reclassified to Statistical Methods Analyst II)			-1	-	-

<b>TOTAL - TARGETED CONSULTATION</b>	<b>64</b>	<b>0</b>	<b>-20</b>	<b>41</b>	<b>34</b>
	Number	Additional	Eliminated	Net	Number
	Originally	Positions	Positions	Authorized	Filled
	Authorized	FY95/96	FY96/97		
		BCP	BCP		

**TARGETED INSPECTION UNIT**

Regional Manager	1	-	-	1	1
Public Health Medical Officer II	1	-	-	-	-
(Reclassified to Staff Services Manager I)				-	-
(Reclassified to Principal Safety Engineer)				1	1
Principal Safety Engineer	1	-	-1	0	-
Industrial Relations Counsel II	1	-	-1	0	-
Senior Industrial Hygienist	3	-	-1	0	-
(Reclassified to District Manager)				2	2
Senior Safety Engineer	2	-	-	1	1
(Reclassified to District Manager)				1	1
Associate Safety Engineer	15	-	-2	9	6
(Reclassified to Assistant Safety Engineer)				2	2
Associate Industrial Hygienist	10	-	-3	8	7
(Reclassified to Assistant Industrial Hygienist)				1	0
Assoc. Gov. Program Analyst	1	-	-	-	-
(Reclassified to Research Analyst I)				1	1
Statistical Methods Analyst II	1	-	-	-	-
(Reclassified to Staff Services Analyst)			-1	-	-
Personnel Services Specialist II	1	-	-	1	1
Accountant I (Specialist)	1	-	-	1	1
Staff Services Analyst	2	-	-	-	-
(Reclassified to Instrument Technician III)				1	1
(Reclassified to Associate Programmer Analyst)				1	1
Office Technician	4	-	-1	3	3
(Reclassified to Secretary)				1	1
Office Assistant	6	-	-	7	5
(Reclassified to Senior Typist Legal)				2	1

**OSH APPEALS BOARD**

Hearing Officer I	2	-	-1	1	1
Senior Typist Legal	1	-	-0.5	0.5	0.5

**TOTAL - TARGETED INSPECTION UNIT**

53	0	-11.5	45.5	37.5
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**DOSH SUBTOTAL**

123	4	-31.5	95.5	78.5
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**High Hazard Program positions authorized  
per FY 1999-00 Finance Letter #FL-6**DOSH

District Manager	1	-	-	1	1
Associate Safety Engineer	7	-	-	6	1
(Reclassified to Assistant Safety Engineer)				1	1
Associate Industrial Hygienist	8	-	-	6	0
(Reclassified to Assistant Industrial Hygienist)				2	2
Office Assistant	3	-	-	3	1

OSH Appeals Board

Hearing Officer	1	-	-	1	0
Senior Typist Legal	0.5	-	-	0.5	0

**SUBTOTAL**

20.5	-	-	20.5	6
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**DOSH GRAND TOTAL**

143.5	4	-31.5	116	84.5
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Discrepancy between Net Authorized positions vs. Number of Filled positions in some classifications is due to the movement of staff between units in response to workload demands.

# ATTACHMENT O

## Targeted Inspection and Consultation Program Consolidated Financial Statement

### ATTACHMENT O

#### Targeted Inspection & Consultation Program Financial Statement (Dollars rounded to nearest thousand)

Loss Control Certification Program	FY 93-94 (1-1-94 to 6-30-94) (Actual)	FY 94-95 (Actual)	FY 95-96 (Actual)	FY 96-97 (Actual)	FY 97-98 (Actual)	FY 98-99 (Actual)
<b>EXPENDITURES</b>						
Loss Control Certification Program	\$190,000	\$437,000	\$480,000	\$663,000	\$642,000	\$778,000
<b>REVENUE</b>						
<b>ASSESSMENTS</b>						
<u>Fund 096</u>						
Cash Collected	\$1,068,000 <sup>1/</sup>	\$901,000 <sup>2/</sup>	\$305,000 <sup>3/</sup>	\$0 _	\$0	\$0
Accounts Receivable	\$0	\$0	\$0 _	\$0 _	\$0	\$0
Sub Total	\$1,068,000	\$901,000	\$305,000 _	\$0 _	\$0	\$0
			-	-		
<u>Fund 284</u>						
Cash Collected	-	-	\$502,000 <sup>4/</sup>	\$520,000 <sup>5/</sup>	\$247,000 <sup>6/</sup>	\$806,000
Accounts Receivable	-	-	\$0 _	\$0 _	\$0	\$0
Income From Surplus Money Invest.	-	-	\$8,000 _	\$19,000 _	\$28,000	\$75,000
Sub Total	-	-	\$510,000 _	\$539,000 _	\$275,000	\$881,000
			-	-		
<b>TOTAL ASSESSMENT REVENUE</b>	<b>\$1,068,000</b>	<b>\$901,000</b>	<b>\$815,000 _</b>	<b>\$539,000</b>	<b>\$275,000</b>	<b>\$881,000</b>
				-		
ANNUAL BALANCE	\$878,000	\$464,000	\$335,000	\$124,000	-\$367,000	\$103,000
				\$1,553,000	\$1,186,000	
CUMULATIVE BALANCE	\$878,000	\$1,342,000	\$1,677,000	00	0	\$1,289,000

#### Targeted Inspection & Consultation Prog.

<b>EXPENDITURES</b>						
Targeted Inspection	\$1,291,000	\$2,617,000	\$2,027,000 _	\$3,637,000	\$4,207,000	\$3,189,000
Targeted Consultation	\$634,000	\$1,845,000	\$1,942,000	\$2,367,000	\$1,947,000	\$2,971,000
<b>Total Expenditures</b>	<b>\$1,925,000</b>	<b>\$4,462,000</b>	<b>\$3,969,000</b>	<b>\$6,004,000</b>	<b>\$6,154,000</b>	<b>\$6,160,000</b>
General Fund Loan Repayment			\$4,354,000 <sup>7/</sup>	\$0	\$0	\$0
<b>GRAND TOTAL EXPENDITURES</b>	<b>\$1,925,000</b>	<b>\$4,462,000</b>	<b>\$8,323,000</b>	<b>\$6,004,000</b>	<b>\$6,154,000</b>	<b>\$6,160,000</b>
<b>REVENUE (Fund 096)</b>						
<b>ASSESSMENTS</b>						
<u>Insured Employers</u>						
Cash Collected	\$0	\$729,000	\$11,739,000	\$6,486,000	\$6,605,000	\$7,837,000

Accounts Receivable	\$0	\$0	\$496,000	\$227,000	\$303,000	\$181,000
Sub Total	\$0	\$729,000 8/	\$12,235,000	\$6,713,000	\$6,908,000	\$8,018,000
Refund to Insured Employers	-	-	-\$729,000 8/	-	-	-
Total Insured Employers	\$0	\$729,000	\$11,506,000	\$6,713,000	\$6,908,000	\$8,018,000
Self-Insured Employers			-	-	-	-
Cash Collected	\$0	\$826,000	\$116,000	\$183,000	\$276,000	\$242,000
Accounts Receivable	\$0	\$0	\$0	\$0	\$5,000	\$0
Sub Total	\$0	\$826,000 9/	\$116,000	\$183,000	\$281,000	\$242,000
Refund to Self-Insured Employers	-	-	-\$582,000 9/	-	-	-
Total Self-Insured Employers	\$0	\$826,000	-\$466,000	\$183,000	\$281,000	\$242,000
Loan	\$4,000,000	\$0	\$0	\$0	\$0	\$0
Income From Surplus Money Invest.	-	\$65,000	\$92,000	\$148,000	\$126,000	\$140,000
<b>TOTAL ASSESSMENT REVENUE</b>	<b>\$4,000,000</b>	<b>\$1,620,000</b>	<b>\$11,132,000</b>	<b>\$7,044,000</b>	<b>\$7,315,000</b>	<b>\$8,400,000</b>
ANNUAL BALANCE	\$2,075,000	-\$2,842,000	\$2,809,000	\$1,040,000	\$1,161,000	\$2,240,000
CUMULATIVE BALANCE	\$2,075,000	-\$767,000	\$2,042,000	\$3,082,000	\$4,243,000	\$6,483,000

#### Footnotes

1/ During FY 1993-94, Loss Control Certification Program revenue of \$1,068,000 was deposited into Targeted Inspection & Consultation Fund (#096)

in accordance with Workers' Comp Reform Legislation.

2/ During FY 1994-95, Loss Control Certification Program revenue of \$901,000 was deposited into Fund 096 in accordance with Workers' Comp Reform Legislation.

3/ During FY 1995-96, Loss Control Certification Program revenue of \$305,000 was deposited into Fund 096 in accordance with Workers' Comp Reform Legislation.

4/ During FY 1995-96, SB 1051 (Chapter 556, Statutes of 1995) created the Loss Control Certification Fund (#284) to receive insurer fees related to

the Loss Control Certification Program.

5/ The Loss Control Certification Fund assessment period is 12 months running from April to March the following year. The \$520,000 revenue collected in FY 1996-97

represents the portion of the April 1996 to March 1997 assessments collected during FY 1996-97.

represents the portion of the April 1998 to March 1999 assessment collected during FY 1997-98.

7/ General Fund loan repayment is comprised of loan of \$4,000,000 plus \$354,000 in interest paid on the loan.

8/ Initial FY 1994-95 Insured Employers assessment collection of \$729,000 was refunded to Insured Employers during FY 1995-96 and revised method of calculating assessments was instituted as a result of SB 996 (Chapter 33, Statutes of 1994).

9/ From the initial FY 1994-95 Self-Insured Employers assessment collection of \$826,000, \$582,000 was refunded to Self-Insured Employers during

FY 1995-96 and revised method of calculating assessments was instituted as a result of SB 996 (Chapter 33, Statutes of 1994).

Revenue collections are displayed on a cash basis.

## ATTACHMENT P -- SAMPLE TICF ASSESSMENT INVOICE AND OFFER LETTER

Dear California Employer:

RE: 2000 BILLING NOTICE FOR Cal/OSHA TARGETED INSPECTION AND CONSULTATION FUND

Enclosed is your 2000 Cal/OSHA Targeted Inspection and Consultation Fund (TICF) Assessment Billing Notice. Reforms of the California workers' compensation insurance system passed by the California Legislature in 1993 and 1995 require the Division of Occupational Safety and Health ("Cal/OSHA") to identify on or before 1 September of each year all insured employers having a workers' compensation experience modification rating (ExMOD) of 125% or greater (in the previous policy year) and levy an assessment on those employers to support the Cal/OSHA targeted inspection and consultation programs.

Based on data reported by your workers' compensation insurance carrier for the policy year 1999, you are a California employer with an ExMOD of 125% or greater and are subject to the 2000 TICF Assessment.

The amount you have been assessed for the 2000 TICF Assessment is based upon your payroll subject to workers' compensation insurance for the policy year 1997 as reported by your workers' compensation insurance carrier to the Workers' Compensation Insurance Rating Bureau (WCIRB).

The amount of assessment you owe in turn is based on the payroll range schedule below, as set forth in Labor Code Section 62.9(a).

<u>WORKERS' COMPENSATION PAYROLL RANGE</u>			<u>ASSESSMENT AMOUNT</u>
Less	than	\$250,000	\$ 100
\$250,000 to		\$500,000	\$ 200
\$500,001 to		\$750,000	\$ 400
\$750,001 to		\$1,000,000	\$ 600
\$1,000,001	to	\$1,500,000	\$ 800
\$1,500,001	to	\$2,000,000	\$1,000
\$2,000,001	to	\$2,500,000	\$1,500
\$2,500,001	to	\$3,500,000	\$2,000
\$3,500,001	and	above	\$2,500

Please remit a check for the full amount of the 2000 TICF Assessment to the "Department of Industrial Relations, Fund 096.01" and send it to the following address:

Department of Industrial Relations  
Accounting -- TIC Fund 096.01  
P.O. Box 420603  
San Francisco, CA 94142-0603

Be sure to include the 2000 Billing Notice Number on your check so that you may be properly credited for your payment. If you dispute your 1997 payroll amount or your 1999 ExMOD as reported to the WCIRB by your workers' compensation insurance carrier, please contact your insurance carrier (or previous insurance carrier if you have changed carriers recently) to verify your 1997 payroll and 1999 ExMOD data.

If your own workers' compensation insurer determines that the payroll and/or ExMOD contained in this Billing Notice are in error, please contact the Department at telephone number (415) 703-5110 and have your insurer mail the revised payroll and/or ExMOD information to the following address:

Cal/OSHA TICF Assessment Unit  
P.O. Box 420603  
San Francisco, CA 94142

California Labor Code Section 62.9(c)(5) and (6) provide that if you do not pay your 2000 Assessment in full and in a timely manner, the Department of Industrial Relations will levy against you a penalty equal to 25% of your 2000 TICF Assessment and will then refer your assessment and penalty to the California Franchise Tax Board for collection of a non-tax debt pursuant to Section 19290.1 of the California Revenue and Taxation Code.

If you should have any questions regarding your 2000 TICF Assessment, please call the Cal/OSHA TICF Assessment Unit at (415) 703-5110.

I encourage you to arrange for assistance in identifying and eliminating the hazards causing your elevated ExMOD by calling the High Hazard Consultation Program at (559) 454-0615. If you are an employer with a significantly elevated ExMOD (i.e., 200% or greater), you will be contacted by a consultant from the High Hazard Consultation Program.

Sincerely,

John Howard  
Chief

